Task Force on Labour Relations

Study No. 4

Compulsory Arbitration in Australia

by Professor J. E. Isaac
Monash University
Australia

Privy Council Office
Ottawa

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(under the Privy Council Office)

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BY

PROFESSOR J.E. ISAAC

MONASH UNIVERSITY

AUSTRALIA

OTTAWA

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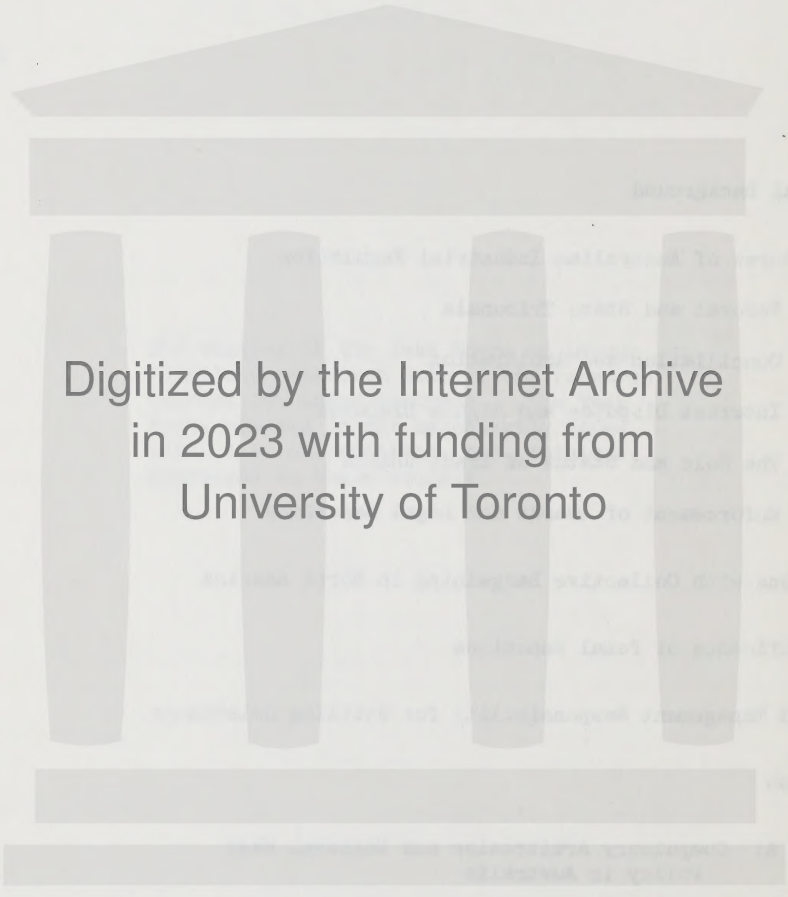

HISTORICAL BACKGROUND

As one of the most highly unionised countries in the world, it might be supposed that "free" collective bargaining of one form or another might be the prevailing characteristic of industrial relations in Australia. But the distinguishing feature of Australian industrial relations, by comparison with many other countries, is the elaborate provision of legally constituted tribunals to intervene in disputes by the processes of conciliation and compulsory arbitration.

There are two aspects to the Australian arbitration machinery. One aspect was by design: to be involved in settling "genuine" disputes on a whole variety of periodic and day-to-day problems. The other aspect evolved as a result of the interaction of social, economic and institutional forces: under the guise of "paper" disputes to formulate national wage policy. The latter feature of the machinery was not envisaged by those who framed the federal constitution and set up the arbitration machinery. Indeed, the surprising thing is that, despite considerable legal obstacles, the arbitration system should have evolved into an agency for national wage policy. The national wage policy aspect of the compulsory arbitration system is discussed at some length in Appendix A. In what follows, the dispute-settling aspect of the arbitration machinery only will be analysed.

The origin of Australian compulsory arbitration may be traced to a series of nation-wide stoppages in the 1890's. Following a period of rapid union growth and increased militancy in the preceding decade, the employers in a number of key industries (shipping, wool, coal) reacted strongly to union ascendancy. In the circumstances of a prolonged economic depression,

they held out for "freedom of contract" and in effect successfully repudiated unionism and collective bargaining. The question of compulsory arbitration had been discussed and rejected by both employers and unions on a number of occasions prior to the 1890's. But with their power squashed and their survival threatened, the unions reversed their stand on compulsory arbitration, seeing in it a source of support and protection. The general public and governments, disturbed at the industrial upheavals and the absence of adequate machinery to deal with large-scale stoppages, began to give serious thought to legal provisions for settling industrial disputes.

In the context of employer rejection of collective bargaining in the key areas of employment, the Australian governments could have prescribed an arrangement for compulsory collective bargaining ("duty to bargain") as did the United States and Canadian governments many years later. Or they could have prescribed something like the Canadian compulsory conciliation arrangement as a means of bringing unions and employers together to the bargaining table. Instead, they embraced compulsory arbitration as an alternative which had been canvassed earlier and one which a number of notable political leaders were advocating as a means of replacing the "laws of the jungle" with its "barbarous expedient" of strike action which threatened to dominate industrial relations. The concept of the "rule of law" which compulsory arbitration was expected to provide had a considerable popular appeal and by the early years of the 1900's compulsory arbitration became the basis of industrial legislation in the newly established federal government and in most of the states.

Only two states chose the tripartite wages board system on industry lines, the original concept of this system being to prevent "sweating" in

those areas of employment which were not effectivery unionised. However, of those who work under the award or determination of statutory authorities (and these make up 90 per cent of employees), only 10 per cent now come within the wages board system, the rest being subject to compulsory arbitration. It is reasonable, therefore, to represent compulsory arbitration as the characteristic feature of Australian industrial regulation.

The object of this brief historical excursion is to emphasize three things:

1. The introduction of compulsory arbitration following the "accident" of large scale stoppages in the 1890's. If these stoppages had not occurred, it is reasonable to suppose that Australia would have continued to follow the English practice of "free" collective bargaining.

2. The faith of large numbers of Australians at the time and even today in the wisdom of the "rule of law" concept of industrial relations. The persistence of this faith is somewhat surprising because in other parts of the world most of the important issues in industrial relations which lead to disputes are regarded as matters involving <u>conflict of interest</u> which are not amenable to the "rule of law" for judicial solution but which must be settled ultimately by compromise. As will be shown below, the fact that compulsory arbitration has not worked with textbook purity has given the system a desirable and necessary degree of elasticity in coping with situations requiring concession to economic power, even if under the guise of "doing justice".

3. The long time which has elapsed since compulsory arbitration was first introduced. Every country is saddled with its history; and in industrial relations, history bites deeply into the minds, attitudes and preferences of the present community. Three generations have now grown up on this system and despite strong resentment from employers in the early days, it has become part of the accepted way of industrial life. Employers, unions and governments have adapted their form, procedure and personnel on industrial relations matters to the existence of compulsory arbitration. There has, of course, been a core of chronic dissatisfaction with the arbitration system; but this dissatisfaction has been not so much with the system as such as with some of the features of its operation.

This historical background is important in any assessment of compulsory arbitration. The fact that it works as well as it does in Australia must, to an important extent, be accounted for by the accustomed attitudes of those who work under it and by the general public approval of the system.

MAIN FEATURES OF AUSTRALIAN INDUSTRIAL REGULATION

What is generally referred to as the "Australian arbitration system" is not a uniform arrangement. There are many tribunals and these vary in name, form, composition, procedure and jurisdiction. To simplify the picture, a number of the more significant features may be summarized briefly to provide a few main generalisations about the system.

Federal and State Tribunals

The details of the federal and state machinery are given in Appendix B. Here the salient features of the division between federal and state jurisdictions will be noted.

On industrial relations matters, the basis of the federal power is contained in paragraph 35 of s. 51 of the Constitution which provides that the federal government can make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State." Despite the restrictive appearance of this paragraph, successive High Court judgments have enabled the jurisdiction of the federal tribunals to be widened so that, at present, about half of those working under awards (and these comprise over 90 per cent of wage and salary earners) are on federal awards. It is probably fair to say that although the federal industrial jurisdiction in Australia is not as wide as in the United States, it is certainly much wider and less rigid than in Canada.

The influence of federal tribunals goes beyond their immediate jurisdiction. Because of their widespread coverage, federal awards have tended to set the pattern for the awards of all other tribunals and, in this way, a

greater uniformity of awards has prevailed despite the multiplicity of tribunals. This fact may have avoided undue conflicts which arise from invidious comparisons between workers doing similar work.

Whereas state governments can legislate directly on wages, working conditions and other employment matters, and their tribunals can make a "common rule" binding those involved in a particular dispute as well as others who are within state jurisdiction, the powers of the federal government are much more limited. It should perhaps be noted that the federal government can legislate directly on industrial relations matters under its Trade and Commerce power. But this power has been used only in a limited area. The bulk of industrial regulation has been based on the more restricted industrial power (paragraph 35 of s. 51). Under this power, it can legislate directly only for its own employees; for the rest it can merely set up machinery which operates by conciliation and arbitration (voluntary and compulsory) to make awards which are legally binding only on those who are involved in the particular dispute. The absence of a "common rule" power has only imposed a technical difficulty on unions and employers, and particular awards have, in practice, been easily generalised to other awards wherever relevant. Nevertheless, the nature of the federal power has contributed two important features to Australian industrial relations: autonomous tribunals which prescribe wages, hours of work and other conditions of work; and the tendency for legalistic points to crop up in matters of procedure and jurisdiction. This, in turn, has led to the dominance of legally trained men among those who make up tribunals at the higher levels and to the frequent presence of lawyers in industrial relations. It is important to realise that this legal bias is not an inherent feature of compulsory arbitration; the Australian character is due to the peculiar circumstances and complexities of the Australian federal system.

Conciliation and Arbitration

The pervasive spread of the paraphernalia of compulsory arbitration and the widespread incidence of awards should not obscure the considerable degree of negotiation (collective bargaining) and conciliation which take place in Australian industrial relations. The considerable growth of payments in excess of awards in recent years bears tangible testimony of the prevalence of negotiation. Many disputes which are formally recorded as having been processed by compulsory arbitration may have been handled by conciliation; just as many awards which formally express the arbitrator's ruling may embody a substantial degree of agreement by the parties. And, indeed, many awards are consent awards expressing the translation of agreements (which have a doubtful legal standing under the common law) into awards which are legally binding on the parties.

Nevertheless, despite these qualifications about the intensity and purity of compulsory arbitration in practice, there is no doubt that in the Australian industrial environment collective bargaining works in an attenuated and somewhat self-conscious fashion by comparison with North America, the United Kingdom or Scandinavia. There is always the figure of compulsory arbitration in the background, ready and willing to be involved in settling the dispute. True, earnest attempts are often made to conciliate; but the parties know for certain that a stale-mate would invite compulsory arbitration. Moreover, the powers to conciliate and to impose compulsory arbitration are usually vested in the same tribunal, a fact which must stultify conciliation. There are a few conciliators with no powers of compulsory arbitration and, although they are very active, their role is somewhat marginal in the total work of the machinery. Also, tribunals have

not been willing, in general, to allow a deadlock to proceed for long in the hope that a mutually acceptable agreement would result eventually. A "settlement" by compulsory arbitration ruling avoids an undue hiatus; and the tendency has been to apply compulsory arbitration with speed.

Thus, although there are features in the practice of Australian compulsory arbitration which resemble North American collective bargaining, there are also significant differences which have imparted certain characteristics to the Australian strike pattern and to union-management relations at the plant level. These matters will be taken up below.

Interest Disputes and Rights Disputes

It should be emphasized that compulsory arbitration is involved in both interest and rights disputes. In fact, the distinction between these disputes is difficult because awards virtually run on indefinitely until changed. Disputes about the adequacy of wages merge in with plant disputes about dismissals, transfers and other "rights" which workers may deem to have under the award or outside the award. Any industrial dispute calls forth the appropriate machinery, federal or state, for conciliation and arbitration. There is no more and no less conciliation or arbitration in one form of dispute than another. A strike action, for whatever cause, may invoke sanctions, as will be emphasized later.

The Role and Status of Trade Unions

The arbitration system would be unworkable if it had to deal with individual workers. The scale of summonses and hearings would be such that the system would break down. If for no other reason, it was understood from the very beginning that trade unions would have to be an integral part of

the system so that workers could be represented by their particular union officials in the settlement of disputes. It was this fact which gave compulsory arbitration great appeal to trade unions in its early days.

Consequently, the arbitration acts make provision for the registration of unions which enjoy full corporate status in the eyes of the law under these acts. Only unions so registered are recognised by the particular arbitration authorities under whose jurisdiction the workers operate. Registration requirements operate also for large employers and employers' associations; but registration has been much more significant for unions because it established the conditions for union security and provided an important stimulus to the growth of unions and unionism. At present, 54 per cent of wage and salary earners belong to unions but the figure was close to 50 per cent forty years ago.

The legal provision for union security goes further than registration. Tribunals have been prepared to incorporate in awards a clause giving preference of employment to union members which in many cases amount to compulsory unionism. In the federal jurisdiction such preferences are of the qualified type ("other things being equal") and have often been prompted by evidence, however slight, of discrimination against unionists by employers. But the states of Queensland and New South Wales have gone further by empowering their tribunals to award absolute preference to union members. The degree of union membership is, consequently, significantly higher in these states. Support for unionism to this extent is, of course, not strictly necessary for compulsory arbitration to work effectively, for as long as the employer is covered by the award, all his workers, unionists and non-unionists, must enjoy award conditions. Rather,

it reflects a pro-union bias in the legislatures and tribunals, and a belief that union security would remove or mitigate one of the causes of industrial strife and, indeed, promote collective bargaining. For it was not the object of compulsory arbitration legislation to displace collective bargaining but, hopefully, to make strikes unnecessary or, at any rate, to reduce their incidence. As was noted earlier, the advent of compulsory arbitration arrangements followed on the rejection of collective bargaining by many employers. By giving unions legal protection and the opportunity to survive and grow, it was hoped that, in general, collective bargaining could flourish. Arbitration would intrude only in cases where collective bargaining broke down.

One of the by-products of union security provisions has been a considerable measure of control over the internal affairs of trade unions in some ways more stringent than the Landrum-Griffin provisions. The registration of unions has been contingent on their rules being in accord with reasonable membership requirements. The rules must be administered fairly and provision is made for members to challenge, before appropriate arbitration authorities, any unreasonable interpretation and application of rules. The finances of unions must be properly audited and disclosed. Strict requirements are imposed on the election of union officials by secret ballot which may, under certain circumstances, be conducted by arbitration authorities. Thus, the conduct of union government and administration has become an important adjunct of the arbitration system.

However, it is important to note that whereas under the Canadian and United States labour laws the certification provisions, substantially on the basis of "majority rule" in individual plants, have resulted in a few

unions only representing the workers in any plant with perhaps one union speaking for the majority of the workers, no such result has come from the Australian arbitration provisions. In fact, it could be argued that the encouragement given to union security resulted in the early days in a rush of union registration from a large number of small unions. And although in the course of time many small unions have amalgamated, as in the case of the United Kingdom, the present structure of unionism in Australia is still one of a large number of small unions of the craft, semi-craft and occupational forms. The two million union members are contained in about 350 unions. Nearly 70 per cent of these unions have less than 2,000 members; but the concentration of membership in the small number of large unions is such that the 70 per cent of unions have only 6 per cent of total union membership, while nearly 50 per cent of total union membership are confined to a mere 5 per cent of the total number of unions.

Once established and registered, unions enjoy security against "pirating" from other unions; and the awards of arbitration tribunals accrue to wage earners irrespective of the size of the union to which they belong. These circumstances do not favour amalgamation into large unions despite obvious economies of scale and convenience of union-management dealings, and despite the long-standing objective of industrial unionism of the Australian Council of Trade Unions to which the most important unions belong. Except where significant advantages are expected to accrue, the identity of separate unions have been retained largely by the vested interest pressure of leadership, differences in industrial and political attitudes, and differences in membership dues and benefits.

These features of unionism are, of course, not inherent in a compulsory arbitration system as such. It is conceivable that an arbitration system

could be developed with registration or certification requirements along North American lines. But in the historical context of Australian unionism, once the structure of unionism is established, it is difficult to restructure the movement along more rational lines. The result is that many unions are involved in each plant, thus complicating union-management relationships and the processes of arbitration. There is here an analogy with Canada: the reliance which weaker unions and smaller employers tend to place on conciliation boards as a means of obtaining more favourable terms. This tendency has encouraged the continuance of small-scale bargaining units.

Enforcement of Awards and Legal Sanctions

Australian compulsory arbitration is compulsory in two senses: in the sense that it requires the parties to submit to a compulsory procedure for presenting their respective arguments and grievances, and also in the sense that the award of the tribunal is legally binding on the parties. The first aspect is not unlike many of the procedures operating under Canadian compulsory conciliation where conciliation boards issue recommendations for the settlement of disputes. It is the second aspect which distinguishes the Australian from the Canadian system because it involves the question of enforcement.

So far as employers covered by awards are concerned, the employment of workers below the standard prescribed by awards would be a breach of the awards and would invite criminal penalties as provided in the particular arbitration acts. Awards generally lay down minimum standards and it is open to an employer to exceed these standards. But the union is not entitled legally to insist on higher standards. The vigilance of unions and the inspectorate of labour departments bring to light cases of sub-award conditions, often among migrant workers, and prosecutions are not uncommon.

The more important sanction is in connection with lock-outs and strikes. Lock-outs are virtually unknown partly because, unlike their Swedish counterparts, Australian employers' associations are not united enough to sustain lock-outs, and partly because of the penal sanctions which employers are not willing to incur.

Conceptually, there is little doubt that to strike against an award conflicts with the spirit of Australian compulsory arbitration. The promoters of the system sincerely believed and argued that the object of compulsory arbitration was to make strikes unnecessary. The "rule of law", "reason", a "province law and order" was provided under arbitration to displace the "barbarous" expedient of strike action! However, the actual legal sanctions against strike action vary despite their common philosophical basis.

South Australian and Western Australian law prohibit strikes unconditionally. In Tasmania, strikes are illegal only where the determinations of the industrial tribunals exist, and this in effect means over most of employment. The laws of the other states, which are more industrialised, are less severe. In Victoria, strikes in essential services (transport, power and other public utilities) are illegal unless endorsed by the workers directly involved in the dispute by a secret ballot conducted by the State Electoral Officer. In Queensland, a strike is illegal unless all members of the union "in the district affected" have authorized it by secret ballot.

In New South Wales, the most populous state, there is a general prohibition of strikes by public servants and workers in specified public utilities and government instrumentalities. In other industries, where no award or agreement exists, strikes are legal. But where awards or industrial

agreements exist, it is illegal to strike unless 14 days' notice of intention to strike has been given to the Minister; or, if the award has been in operation for one year, unless a decision to strike has been taken by a secret ballot on the terms of the award. Thus, in these cases, New South Wales legislation aims to delay strike action in the hope of a settlement before the end of the "cooling off" period and the result of the secret ballot. There is here a strong resemblance to the concept of the system operating in some of the Canadian provinces. But, in practice, in the majority of strikes these requirements for legalising strike action are not met.

These state laws apply even where federal awards are in force unless the latter specifically exclude them. But it should be noted that, except in the case of New South Wales and Queensland, the state laws against strikes are rarely invoked. This is not to say that their existence has not at times reduced the magnitude and duration of strikes. This is a point which is difficult to establish. But perhaps some light may be thrown on the use of penal sanctions by considering the federal penal provisions which have been invoked frequently in recent years.

For many years, the federal Arbitration Act contained a clear provision making strike action illegal and subject to penalties. In 1930, however, this provision was removed and since then it has not been illegal, as such, to strike against an award. (However, federal public servants may be dismissed instantly for taking part in a strike.) Although from the beginning the Act contained penalties against persons inciting workers to go out on strike against an award, this section of the Act has rarely been invoked because of the difficulty of giving practical force to the meaning of

"inciting". The more common "sanction" used by tribunals until the 1950's was to deregister a union on strike in defiance of the order of the tribunal to return to work. The basis of such action is not so much to impose a sanction as to express the view that a union which did not obey the tribunal should not expect tribunal recognition or to enjoy the awards of the tribunal. However, in practice deregistration has not been permanent, and following the strike the deregistered union, upon making a suitable apology, has usually been reregistered. A threat of deregistration might constitute some king of sanction only when there exists the possibility of a break-away or rival union being formed. Only a few such cases have occurred.

In 1951, the federal Act was suitably amended to facilitate the operation of a system of penal sanctions by injunction against strikes. The way in which the provisions of this system work is as follows: an employer under federal award may apply for the inclusion of a "bans and limitations" clause in the award which in effect prohibit limitation of work by strike action or overtime restrictions. If the tribunal is persuaded that the union has a strike "history" (and this can mean merely that the union has taken strike action recently), it may agree to the insertion of this clause. Once this clause is in, any strike action or threatened strike action provides the employer with the opportunity to apply to the Industrial Court (which is concerned with, among other things, the administration of penal sanctions) for an injunction against strike action. Such an injunction may be issued (whatever the cause of the stoppage or threatened stoppage) for a limited period of months or for an unspecified time. While the injunction operates, any strike action may be drawn to the attention of the Industrial Court which could (and usually does) fine the union concerned for contempt of Court. The fine specified in the Act is up to $1,000 per day of strike. The legal

costs involved in these proceedings, which tend to be high, are frequently awarded against the union.

It may be of interest to note that it is no easy matter for a union to opt out of federal arbitration and pursue collective bargaining outside the effective reach of the penal provisions. Some years ago all the Australian airline pilots resigned from the union which was registered under the federal Arbitration Act and established another union under another name. This was done in order to escape from the penal provisions which had been applied to the old union. Being a cohesive group with no threat of a split or rival unionism, this operation was carried out with no difficulty. For a few years the new union engaged in collective bargaining outside the arbitration system, and applied the threat of strike action with favourable effect on the terms it was able to secure from the airline companies. However, in 1967 the federal government enacted legislation for the setting up of special machinery to deal with disputes involving air crew which may use compulsory arbitration as a last resort. Thus, only a union which is narrowly confined to intra-state operations appears to have the opportunity of opting out of federal arbitration. And even then there is always the possibility of such a union being drawn into a compulsory arbitration arrangement under state law. It is this virtual absence of choice between compulsory arbitration and collective bargaining which makes it so difficult for unions to accept the philosophy that the right to strike must be surrendered under compulsory arbitration.

The frequency and amounts of fines in the federal and various state jurisdictions are shown in Table 1. Discussion of the effectiveness of these penal sanctions will be deferred to a later stage.

TABLE I

FINES IMPOSED AGAINST STRIKING UNIONS, 1956-65

	Comm.		N.S.W.		Queensland		W. Aust.		Aust.	Vic.	Tas.	Total	
	No. of fines	Amount of fines $ A	No. of fines	Amount of fines $ A	No. of fines	Amount of fines $ A	No. of fines	Amount of fines $ A					
1956	—	—	8	2,620	4	750	—	—	Nil	Nil	Nil	12	3,370
1957	5	2,000	1	500	—	—	—	—				6	2,500
1958	16	5,300	1	200	—	—	—	—				17	5,500
1959	1	200	27	4,350	—	—	—	—				28	4,550
1960	9	6,810	5	1,700	—	—	—	—				14	8,510
1961	4	3,700	40	11,050	2	110	—	—				46	14,860
1962	28	18,300	2	100	3	530	—	—				33	18,930
1963	37	25,100	8	2,100	2	100	45	450				92	27,750
1964	119	59,000	25	7,300	20	13,900	—	—				164	80,200
1965	77	40,700	—	—	4	1,100	—	—				81	41,800
	296	161,110	117	29,920	35	16,490	45	450				493	207,970

SOURCE: Kingsley Laffer in "Elements of Australian Compulsory Arbitration: A Reassessment", a paper to the Conference on Contemporary Australia, Commonwealth-Studies Center, Duke University, Durham, N.C. Computed from statistics supplied by Commonwealth and State Departments of Labour.

COMPARISONS WITH COLLECTIVE BARGAINING IN NORTH AMERICA

The main features of Australian compulsory arbitration discussed above raise a number of practical questions about the effects of the system by comparison with the operation of collective bargaining in North America. How different are the processes of compulsory arbitration and collective bargaining?

In its "pure" form, the process of compulsory arbitration is one of advocacy on the part of the contending parties before the arbitrator. Each side pleads its case using forensic skills and tactics to persuade and impress the arbitrator. The arbitrator having heard both parties and having asked the necessary questions issues a "judgment" in the form of an order or award, defining the terms of settlement of the dispute. In other words, the process is akin to the judicial proceedings common to the ordinary courts of law.

The process of "pure" collective bargaining is one of negotiation between the parties, assisted maybe by a mediator. The latter's role is to help the parties narrow their differences so that agreement may be achieved. The conceptual difference between negotiation and advocacy is that whereas the former involves narrowing differences by an exchange of concessions in order to reach a mutually acceptable agreement, the main feature of the latter is for each party to exaggerate its case in order to impress the arbitrator into making a favourable award. Negotiation involves working together, advocacy emphasizes antagonism, working against each other. An agreement expresses a meeting of minds, for expedient or other reasons, which the parties themselves are pledged to uphold for the duration of the contract. An award under compulsory arbitration expresses a third party's judgment which neither

of the disputing parties need necessarily feel obliged to uphold or to commend to its constituents. The existence of the right to strike under collective bargaining provides an important pressure for a settlement; whereas this right is inconsistent with compulsory arbitration and is replaced by penal sanctions as the coercive force. The use of penal sanctions to enforce the award may lead the parties to bow to circumstances but it is likely to be an attitude of hostility or, at best, of negative resignation rather than one of strong obligation to ensure that the terms of agreement are adhered to. In sum, for collective bargaining to work effectively requires cooperation between the parties; compulsory arbitration merely requires co-existence.

However, these "pure" situations are not commonly found in practice. Certainly, Australian compulsory arbitration works a little differently from the above analysis. There is usually a fair amount of negotiation between the parties despite the stultifying effects of the probability that certain key issues will ultimately go to arbitration. But more importantly, the award of the arbitrator does not always express an "impartial" judicial judgment but rather an expedient formula which the parties themselves might eventually have arrived at. In the same way, the conciliation process under collective bargaining need not be an entirely "neutral" emollient and channel of communication between the parties. The conciliator may be a more active and positive agent in persuading the parties to accept an expedient solution.

Dean H.D. Woods of McGill University has made a useful distinction between "accommodative" and "normative" conciliation in the Canadian system, and no doubt this distinction has application to a greater or lesser degree to the conciliation process under collective bargaining in other countries.

Accommodative conciliation simply keeps negotiations between the parties going and the solution largely emerges from the deliberations of the parties themselves. In normative conciliation, the conciliator plays a more active part in proposing possible solutions and in subtle ways applying pressures on the parties to accept his suggestions. The conciliation boards of the Canadian system are required to recommend the terms of settlement, a situation which exemplifies the most extreme form of normative conciliation.

The same distinction may be made usefully in compulsory arbitration. Accommodative arbitration results in an award which embodies substantially the terms which the parties themselves would have reached, bearing in mind their bargaining powers. The "rules of evidence" of a purely judicial procedure, if not abandoned, are diluted and the main objective of arbitration is to find something close to a mutually acceptable solution. The award is thus a pragmatic attempt to resolve the dispute, to avoid a strike or to induce a return to work. Normative arbitration, on the other hand, attempts to impose a "just" solution on the parties, taking into account the merits of the case rather than the power situations of the parties or the acceptability of the terms to both sides. The difficulties of deriving a formula for a "just" settlement, particularly in interest disputes, and the general desire of the arbitrator to avoid a strike or a prolongation of a strike, tends to encourage accommodative arbitration.

Viewed in this way, one is led to the conclusion that in practice accommodative arbitration is likely to be little different from normative conciliation. At any rate, they may be said to shade into each other as processes of dispute settlement. Thus, in so far as the Canadian compulsory conciliation system works in its final stages by the process of normative

conciliation in interest disputes, it may be said to be similar to the application of accommodative compulsory arbitration in the Australian system.

To say this does not necessarily equate, even roughly, the two systems. There remain significant differences between them which need to be emphasized. There is, first, the existence of penal sanctions in the Australian system and some discussion of the effects and effectiveness of this feature deserves to be considered. Secondly, the effect of an award as against an agreement could have important implications for union and management responsibility and attitude, particularly at the plant level. In this connection, the absence of a clear-cut distinction between interest and rights disputes under Australian compulsory arbitration is significant.

THE SIGNIFICANCE OF PENAL SANCTIONS

Penal sanctions against strike action are, of course, not only confined to compulsory arbitration. In the United States, strikes in public employment are illegal, as are jurisdictional strikes and secondary boycotts. Grievance strikes during the life of a contract are illegal in Canada, and constitute a breach of contract in the United States where a no-strike clause is incorporated in the contract. But in these countries, the right to strike on matters of interest in contract-making is legal and is, indeed, accepted philosophically as part of the process of collective bargaining, subject only to the qualification in the United States that a situation of emergency resulting or likely to result from the strike would call for restriction of strike action and, in Canada, for the process of compulsory conciliation to be applied before strike action may be used. As has been argued above, philosophically there is no place for strike action under compulsory arbitration, whether on interests or rights. And although it is not everywhere illegal to strike as such, the penal sanctions provisions are so framed as to impose potential penalties on strike action.

It was noted above that under federal arbitration law the inclusion of a "bans clause" in an award (and nearly all the important awards are subject to this clause) provides the opportunity for the application of fines on unions on strike. However, the penalty is not automatic. The issue of an injunction gives the union on strike the opportunity to return to work without being fined. Further, a defiance of the injunction need not normally invite a fine if the employer does not take action to draw the attention of the Industrial Court formally to the existence of the strike in defiance of the injunction and in contempt of the Court which issued it. Moreover, even

where contempt is shown to exist, the Court does not always impose a fine but has sometimes used the expedient formula of adjourning the proceedings to provide the opportunity of a return to work without sanction. Thus, although much of the initiative for applying the punitive measures of compulsory arbitration rests on the employer, many employers do not take this action freely and automatically. And even when action is taken, the full force of the punitive provisions are not usually applied. A union on strike against an injunction is liable to a fine of up to $1,000 for each day of strike. But employers normally draw attention to a day or two of strike action and refrain from exploiting the fine for every day of stoppage despite their right to do so.

All this simply emphasizes the practical limitations of applying sanctions fully and completely as a device for punishing unions. When invoked at all (and most strikes go without resort to sanctions), the penal provisions tend to be used more as a device for inducing a return to work rather than as a means of punishment. There is sufficient awareness among employers that massive fines would cripple unions financially and cause prolonged bitterness and under-the-surface strife. Indeed, it could result in such a degree of hostility to the system of compulsory arbitration as to make it quite unworkable. Moderation in sanctions is critical to the survival of the system.

In support of the continuance of the present penal provision, the leading employers associations have argued that they have not invoked penal sanctions indiscriminately. An attempt is made to distinguish between three categories of disputes: those of a local character involving a particular plant where genuine differences may exist on pay or other matters; those

which are the result of officially and strategically organized campaigns for higher pay; and those which are politically inspired. The employers claim that disputes in the first category are explored patiently, generally with the use of penal sanctions only as a last resort. In the other cases, however, the employers argue that they have tended to use the penalty provisions as a defence and a preventative against strikes and as a means of ensuring that the concept of compulsory arbitration is not unduly diluted. While the "patience" of certain employers and their assessment of political inspiration may be questioned, in general this is probably a reasonable statement of the position. But, the deterrent effects of fines although difficult to establish, may be much less than the employers suppose.

The official pronouncements of the unions are generally hostile to the frequency and the manner with which the penal provisions have been invoked rather than to these provisions as such. Union membership in a large proportion of plants may extend to five or more unions, and several of these may not be aware of the imminence of a strike because of the small number of their members in the plant concerned. Also, in many cases these unions would have difficulty in preventing strike action because of the minority of their members. However, when penal provisions are invoked, the sanctions fall on those unions which have had a more active part in organizing the strike as well as on these unions. Nevertheless, there are many instances when the threat of penal sanction has been welcome to trade union leaders as providing a face-saver and lever for persuading their members to return to work.

It is difficult to say with any confidence what the effect of the penal provisions have been on strike action. It is clear that in most

cases these provisions have not been invoked; and because the initiative generally rests with the employer, we may conclude that for various reasons employers have chosen not to invoke sanctions. It is possible that the mere existence of these provisions and the likelihood of their use could have been a factor in reducing the incidence of strike action.

Table 2 compares the loss from stoppages in a number of countries. It will be noticed that the loss in Australia is significantly less than in Canada and the United States. But it would be difficult to argue that this may be attributed to existence of compulsory arbitration in the former and collective bargaining in the last two countries. The experiences of the United Kingdom, Sweden, Germany and France, to name a few countries, which operate under collective bargaining show a smaller loss from stoppages than Australia. There is clearly more to these figures than the mode of dispute settlement. However, what is a more persuasive hypothesis is that penal sanctions have tended to reduce the duration of strikes. Indeed, it may well be that the penal provisions have shortened the duration of strikes at the expense of increasing their frequency. The federal provisions have generally been used to encourage a return to work rather than to fine a union merely for having gone on strike. The "trial of strength" type of strike action, once a common feature of Australian industrial relations, seems to be a rarity these days, a fact which may be attributed to compulsory arbitration. Certainly, the average duration of strikes has fallen significantly over the years as the following figures show:

TABLE 2

INTERNATIONAL COMPARISONS OF DAYS LOST

THROUGH INDUSTRIAL DISPUTES

(Man days lost per 1000 persons employed in mining, manufacturing, construction and transport)

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	Average for 5 years (1956–1960)	5 years (1961–1965)	10 years (1956–1965)
Australia*	630	370	250	200	380	330	280	300	460	390	366	352	359
Belgium	600	2,320	150	440	210	60	160	140	250‡	40†	744	130	437
Canada	560	630	1,220	310	310	510	590	330‡	560‡	790†	606	556	581
Denmark§	1,470	10	20	30	100	3,340	30	40	30	420	326	772	549
Finland	110‖	390	60	610	130	50	30	1,410	80	20	260	318	289
France	190	510	160	280	160	330	220	770	280	110	260	342	301
Federal Republic of Germany¶	150	80	50	—	—	—	30	140‡	—	—	56	34	45
India	1,100	850	990	770	770	420	500	240	570‡	450†	896	436	666
Ireland	160	350	360	270	140	590	320	760	1,600‡	1,770†	256	1,008	632
Italy	330	480	470	1,020	540	870	2,270	1,150	1,270	450	568	1,202	885
Japan	460	520	520	520	350	440	350	180	190	310	474	304	389
Netherlands	110	5	20	10	260	10	—	20	20	30†	81	16	49
New Zealand	75	80	60	90	100	100	250	160‡	160	50	81	144	113
Norway	1,400	10	40	80	—	570	130	360	—	—	306	212	259
Sweden**	—	20	10	10	10	—	—	10	10	—	10	4	7
Switzerland	—	—	—	—	—	—	—	50	—	—	—	10	5
United Kingdom‡‡	150	620	260	420	240	220	440	140	170	220	338	238	288
United States‖‖	1,300	630	1,030	2,770	750	650	730	630	850	860	1,296	744	1,020

*Including electricity and gas.
†Preliminary figure.
‡Revised figures (due to revisions of the number of days lost or to more recent employment benchmark figures).
§Manufacturing only.
‖Excluding days lost during general strike of 1st–9th March 1956 (6,990,000 days lost and 423,000 employees involved).
¶Excluding West Berlin (and the Saar up to 1958).
**All industries included.
‡‡Owing to changes in industrial classification the figures from 1959 onwards are not strictly comparable with those for earlier years.
‖‖Beginning 1960: including Alaska and Hawaii. Figures cover also electricity, gas and sanitary services.

Note.—Where no figure is given the number of days lost per 1,000 persons employed is nil or negligible.

SOURCE: United Kingdom, Ministry of Labour Gazette, October 1966, p. 648. Based on International Labour Office statistics.

Working Days Lost per Striker in Australia

1900-29	14.2
1930-47	7.0
1948-56	3.2

(From A.M. Ross and P.T. Hartman, Changing Patterns of Industrial Conflict, Wiley, New York, 1960, p. 27.)

However, compulsory arbitration does not seem to have prevented or even to have reduced the incidence of stoppages of short duration. Indeed, these stoppages have increased very considerably over the years even when discounted by the growth in the number of establishments. It is arguable, therefore, that compulsory arbitration may have encouraged the occurrence of these short-lived strikes which are more in the nature of protests against unacceptable arbitration awards and unattended grievances at the shop level.

Table 3 compares the duration of stoppages per man involved in stoppages in a number of countries. It is significantly shorter for Australia and New Zealand, the two countries with compulsory arbitration, and much larger in the United States, Canada and Sweden—in the case of the last, despite a very much smaller overall number of man days lost per worker employed. (Table 2) Australian strike loss is dominated by two comparatively small but highly strike prone industries—longshoring and coal mining—where strikes are typically of very short duration. But even if these industries are excluded, the duration remains comparatively short in Australia. This is shown in Table 4. The importance of Physical Working Conditions and Managerial Policy in regard to frequency, duration and time loss needs special emphasis. These stoppages arise from what in North America would be called grievance issues—dissatisfaction with the working environment,

disciplinary cases, promotion problems and other aspects of managerial actions. To some extent, the category of Trade Unionism includes issues which are in the nature of grievances, such as the employment of non-union labour in cases where there might be an understanding, implicit or otherwise, about the employment of union labour, and also on jurisdictional issues.

TABLE 3

DURATION OF STOPPAGES

(Man days lost per man involved in stoppages)

	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965
Australia	2.6	1.9	1.6	1.5	1.2	2.0	1.4	1.4	1.7	1.7
New Zealand	1.8	1.8	1.4	1.6	2.5	2.3	2.3	3.7	1.9	1.4
United Kingdom	4.1	6.2	6.6	8.2	3.7	3.9	1.3	3.0	2.6	3.3
Canada	14.1	18.3	25.3	23.4	15.0	13.6	19.1	11.0	15.7	13.7
United States	17.4	11.9	11.6	36.7	14.5	11.2	15.1	17.1	14.0	15.0
Sweden	2.6	32.7	178.6	19.3	12.5	15.0	1.4	8.8	17.7	16.5

SOURCE: International Labour Office, Year Book of Labour Statistics, 1966.

TABLE 4

AVERAGE STRIKE ACTIVITY BY CAUSE
IN VARIOUS INDUSTRIES, 1952-1963

Industry	Wages, Hours Leave	Physical Working Conditions and Managerial Policy	Trade Unionism	Other Causes	All Causes
		Frequency (a)			
Coal Mining	16.6	342.5	71.5	144.3	574.9
Stevedoring	15.4	173.3	15.6	20.1	224.4
Other Industries	120.7	234.9	35.0	21.0	411.6
All Industries	152.7	750.7	122.1	185.4	1210.9
		Duration (b)			
Coal Mining	1.190	2.183	1.701	1.174	1.752
Stevedoring	1.948	1.099	3.350	.659	1.319
Other Industries	2.609	3.142	2.065	.749	2.436
All Industries	2.389	2.072	2.284	.893	1.914
		Time Loss (c)			
Coal Mining	.300	4.455	.809	1.712	7.376
Stevedoring	2.118	2.813	1.075	.774	6.780
Other Industries	.072	.053	.005	.007	.137
All Industries	.090	.125	.002	.003	..220

SOURCE: D.W. Oxnam, "Issues in Australian Industrial Conflict: Australian Experience, 1913-63", Journal of Industrial Relations, March 1967, p. 20. Based on statistics published by Commonwealth Bureau of Census and Statistics in the Labour Reports.

(a) Average number of strikes per year.
(b) Average man days lost per striker (worker involved).
(c) Average man days lost per employee.

UNION AND MANAGEMENT RESPONSIBILITY FOR SETTLING GRIEVANCES

The importance of these grievance issues as a source of strikes in Australia brings to the fore one of the major shortcomings of the Australian compulsory arbitration system. It has been emphasized that, for practical purposes, no distinction is drawn between interest disputes (which involve establishing the terms of employment) and rights disputes (which concern the interpretation and administration of the terms as set out in a contract or award). Penal sanctions apply to all types of strikes on interest and rights, involving large or small numbers of workers, in emergency situations and in economically less significant stoppages. Although no clear distinction is possible between interest and rights because the life of an award is effectively indeterminate, it is, nevertheless, possible to argue that while compulsory arbitration may have succeeded in reducing the duration on interest-type issues, it may have aggravated or at least been unable to cope with stoppages arising from grievance on rights-type disputes. The large number of short strikes on over-award (interest) issues in recent years also points to another substitute for the protracted strikes.

It may be said in passing that it is difficult to establish without a great deal more work whether, for a given number of man days lost per man, strikes of short duration are more costly than long strikes. It may be argued that the loss resulting from long strikes in contract negotiation can be anticipated by stockpiling and made up subsequently by overtime work; whereas the loss from the spontaneous type of short-lived stoppage is more difficult to offset.

The need for processing grievances was realized very early in the history of arbitration in Australia. For this purpose, most awards provided for the establishment of Boards of Reference to deal with local disputes "arising out of the award". In a few industries, these Boards have operated actively as grievance processing bodies. But by and large, they have not functioned as such. The shortcomings of the Boards of Reference arise partly from the legal limitations on which they are based. Boards under the federal jurisdiction may not interpret awards nor enforce them; they may only "apply" them. Matters of interpretation of awards can only be vested in a tribunal composed of persons with judicial office and life tenure. Obviously, to apply without in some sense interpreting an award would be difficult in most cases. Jurisdictional legal problems often also arise in connection with local grievances. For example, a dispute in a dismissal case is normally confined purely to a particular plant. Even though the employer operates a federal award, this particular dispute would not be interstate in character and would not come under the jurisdiction of a federal tribunal. There is often also doubt whether it could come under the scope of a state tribunal. However, in most cases, despite legal doubts federal tribunals process such disputes, but the no-man's-land nature of many of these disputes does not help to create certainty in grievance procedure anywhere approaching the practice in Canada and the United States.

Apart from these legal difficulties, which arise from the peculiarities of the Australian legal environment rather than from any inherent features of compulsory arbitration, the neglect of grievance procedure in Australia could be said to arise from two other inter-related factors.

First is the tendency for arbitration awards to refrain from intruding into certain matters of "managerial prerogatives". Questions on which North American unions expect to have a say and, if possible, spelled out in the contract (such as dismissals, disciplinary action, seniority claims, transfers, etc.) are not generally prescribed in a clear way in Australian awards. There is virtually a presumption that the employer has sole discretion in these issues. For example, to be rid of a "trouble-maker" all the employer needs to do is give a week's notice of dismissal. The employer's right at common law to hire and fire is basically unimpaired under Australian compulsory arbitration.

Secondly, neither employers nor unions generally provide an adequate formal organisational process for dealing with these issues at the shop level. Management, assuming the right of unilateral action, takes what it regards as the appropriate action; should a stoppage occur, it generally expects arbitration authorities to persuade the workers to return to work, sometimes under the threat of the penal provisions. The organisation of unions at the local level is not nearly as well developed as in North America. Union authority tends to be centralised partly because of early British influence and partly because the needs of compulsory arbitration call for union responsibility at the higher levels of organisation. The shop stewards, who are the union representatives at the shop level, have no formal powers or official standing to speak for the union and are required to refer disputes to branch officials for action. This would not matter much if there were adequate union officials on hand to attend to disputes quickly. But the poor financial position of unions does not generally allow an adequate staff at the level where authority and responsibility lie. Consequently, those with formal powers of action are frequently not readily accessible in cases of sudden disputes at the shop level. This vacuum often

tends in practice to be filled by shop stewards in defiance of union rules. Shop stewards, sometimes organised as "shop committees", take action in making claims on employers on interest matters as well as on rights. And where employers refuse to deal with these shop stewards or to accede to their claims, brief strike action often ensues before branch officials are able to control the situation. Consequently, strained relations often arise between the branch officials and the shop committees; but little seems to have been done to strengthen formal union accessibility at the shop level to ensure that claims and grievances are properly processed before resort to strike action is necessary. So long as the terms of employment are fixed as awards by arbitration authorities, there will be a tendency for union officials not to feel any urgent sense of responsibility to ensure that no strike action occurs, particularly of the spontaneous and short-lived type.

Thus, the greater freedom accorded to management for unilateral action and its reliance on arbitration authorities to "settle" differences on the one hand, and the absence of an effective union organisation to deal adequately with the day-to-day problems of the shop on the other, tend to lead to many walk-outs and short strikes of a protest nature on a variety of grievances, some petty and others more substantial. By contrast, the employer under North American collective bargaining has been forced to give up the right to unilateral action on a wide range of managerial issues while, at the same time, the union is required not to strike in grievances cases. These circumstances have established the need for a formal step-by-step arrangement in which both union and management are intimately involved, to make the orderly processing of grievances possible.

In recent years, a number of United States-type contracts have been made in Australia and some have been registered into consent awards under

the federal arbitration provisions, with a step-by-step grievance procedure spelt out in the award and a member of the Commonwealth Arbitration Commission assigned to arbitrate on unresolved grievance issues. In these cases, the unions undertake to abandon the right to strike during the term of the contract or consent award in return for a set of terms, voluntarily agreed upon, on a more generous standard than those generally prevailing in arbitration awards. With the growth of over-award terms throughout the country in the postwar circumstances of steady full employment, it is possible that more employers will tend to exact a no-strike pledge from the unions as a quid pro quo. The surprising thing is that this tendency has not developed more widely already. Such an arrangement would seem to offer the prospect of securing some of the advantages of American collective bargaining but it is only feasible where the terms of employment are settled substantially by agreement and not imposed by arbitration. It is unlikely that unions would feel bound to ensure that no strikes occurred during the indeterminate currency of an award if the terms are imposed on them by award even if these terms approximate those which the unions would have been prepared to settle for by negotiation.

The development of an orderly grievance procedure with a no-strike pledge from the unions backed by a majority vote of the members could, therefore, only proceed if the terms of employment were arrived at by agreement for a finite period; and this in turn implies that in interest disputes more latitude needs to be given for strike action without resort to the penal provision. Without these conditions it is difficult to see how unions could be persuaded to take a more active responsibility in order to reduce the large proportion of spontaneous and short-lived strikes. What all this amounts to is that to minimize the incidence of grievance stoppages would

involve a reduction in the influence of compulsory arbitration and, in effect, an increase in the scope of collective negotiation in interest disputes, with the risk of longer stoppages. Agreements or consent awards arrived at in this way would need to have a prescribed limited life during which time grievances would be processed, if necessary by arbitration, but without resort to strike action. In addition it is likely that a removal of the legal limitations, doubts and difficulties of the Board of Reference procedure could assist in reducing the frequency of grievance-type stoppages.

EVALUATION

An evaluation of any industrial relations system would be misleading if it did not emphasize the importance of historical factors which have established certain norms, institutional structures and public attitudes. Weaknesses in particular arrangements for settling industrial disputes which emerge purely from theoretical analysis may turn out to be less significant and less persuasive if projected realistically into the historical context of the country in question. So it is with Australian compulsory arbitration. A cautious evaluation of the Australian system would be that despite many of its weaknesses, on the whole, it has worked reasonably well and that, given the historical background, a forced move to an alternative system would not necessarily be more successful. For the present, at any rate, there is no strong feeling on the part of unions or management for an alternative system, to an important extent because they have adjusted themselves comfortably to an arrangement which enables a third party to shoulder the burden of much decision-making in industrial relations.

However, if Australia were starting afresh it would not necessarily choose the arrangements which have evolved. And for those countries which may desire to adopt compulsory arbitration as a standing arrangement for settling industrial disputes and look to Australian experience as an object lesson, it may be useful to set down some of the credits and debits of compulsory arbitration as it appears to have worked in Australia, discounting as far as possible the effects of the peculiar circumstances of the Australian Constitutional problems on the workings of compulsory arbitration.

On the credit side, four points should be noted. First, the institution of conciliation and compulsory arbitration has provided, early in the

history of industrial relations, a device for a speedy settlement of industrial disputes of all kinds, in private and in public employment. Secondly, the pervasiveness of compulsory arbitration in the economy has produced a greater degree of uniformity in the standards of wages and working conditions than might be expected to prevail in a country with such a wide geographical spread and diversity of union size and power. The standards achieved by the strong unions have tended to be applied generally to workers with weaker bargaining power. Thirdly, in giving registered unions legal status and security, it removed much industrial unrest associated with union organisational drives and established the basis for stable unionism. It has also provided elaborate legislation for the protection of the rights of individual union members against oppressive and unreasonable practices of union leadership. Fourthly, the existence of penal sanctions, particularly when used discriminately, has reduced the loss from long drawn-out stoppages and has often provided the means for strengthening the hand of union leadership against fruitless strike action. The comprehensive scope of the arbitration machinery is, of course, a reflection of the full acceptance of public responsibility for industrial relations.

Against these credit points, the question may be asked: once trade unions are well established, protected and accepted (and this could be done without compulsory arbitration), is there a strong case for a degree of public responsibility which freely intervenes in disputes, prescribes the terms of employment and imposes restrictions on strike action even when the public interest at large is not in jeopardy? Should public responsibility only be exerted in this manner when the public interest is threatened in a meaningful way? In answer to these questions it should be emphasized again that compulsory arbitration in Australia does not work with textbook purity.

Much of what formally goes for "compulsory" is not such but voluntary; much of "arbitration" is negotiation and accommodation to the power positions of the parties; penal sanctions are frequently not sought or applied. These qualifications in themselves show the limits to which compulsory arbitration can be pushed.

Nevertheless, the existence of efficient facilities for compulsory arbitration must be assumed to play an important part in any process of "voluntary" negotiation between unions and employers such as to distinguish it from the negotiating processes in the United States and Canada. Reference has been made to the "stultifying" effects of the ready availability of compulsory arbitration and the possible use of penal sanctions on the conciliation phase; on the readiness of the disputing parties to exchange concessions with each other; and on the degree of self-reliance of unions and management in fixing the terms of employment and, even more importantly, in the application of these terms. To those who admit these stultifying effects but retort "so what", the answer appears to be evident in the large number of short-lived stoppages which reflect, in good part at least, the inadequacy of union-management leadership in attending to claims and grievances and its tendency to farm these matters out to the arbitrator. If a judgment is to be made (and it cannot be a positive proof) this is the outstanding difference between North American and Australian industrial relations. A further judgment, of course, is required as to whether, on balance, this is a small price to pay for the virtual elimination of protracted strikes. Unfortunately, there is so far no work on which such a judgment can reasonably be made. There is also the financial cost of running the arbitration machinery, but this should not be exaggerated. In cost comparisons with the United States and Canada, the expenses involved in mediation and conciliation

services as well as the additional staffing which unions and management in these countries provide for industrial relations must be set off against the cost of compulsory arbitration.

In the same way, in comparing the operation of collective bargaining in Canada with its compulsory conciliation provisions with the comparatively "free" collective bargaining system of the United States, a judgment must be entered on what net contribution the strike-delaying process of compulsory conciliation, particularly in the normative phase, makes to industrial relations. If, as is often likely to be the case, true negotiations on contract are deferred until the "ritual" of compulsory conciliation has been worked through, the question arises whether delaying strike action in disputes which are not reasonably put in the national emergency class is of any real value to industrial relations. True, the recommendations of the Conciliation Board may influence the ultimate terms of settlement. But it does not follow invariably that these recommendations are more just, fairer or economically more commendable than the terms which the disputing parties would have reached independently.

Of course, under national emergency conditions the urgency of a settlement calls for a degree of public intervention which puts aside as a secondary consideration the effect of such intervention on union and management self-reliance. Could it be that the Canadian provisions, particularly those of Alberta and British Columbia and, even more so, the provisions of Australian compulsory arbitration, are more appropriate for emergency situations? Certainly, the notions of compulsory arbitration found fertile soil in the circumstances of the Great Strikes of the 1890's. When compulsory arbitration legislation was brought down soon after, the justification was put in terms of the experiences of the 1890's. But once the

machinery was set up and made freely available, time made habit of this machinery despite the avowed objective of the legislation to encourage the development of collective bargaining. The wisdom of the much espoused American concept of the "arsenal" approach is seen clearly in this light. The only condition which would encourage "free" collective bargaining in Australia is a more tardy and uncertain application of compulsory arbitration and a willingness on the part of tribunals to suffer protracted strikes without making either awards or sanctions available. This approach has, however, not been attempted seriously in Australia partly because of a morbid fear of long strikes and partly because of the general acceptance of the "rule of law" in industrial disputes—on interests and on rights.

Thus, the choice in favour of compulsory arbitration or any arrangement which interposes third-party "settlements" in industrial disputes must be based on the relative social value of the force of public regulation in some sense or another, as against the value of industrial settlements arrived at largely by the disputing parties themselves on the basis of their respective self-interest. True, this self-interest, as any sophisticated employer and union leader knows, must be exercised to a greater or lesser degree in the context of public reaction and the public interest: there is no such thing as <u>absolute freedom</u> in negotiations! But there is surely a difference between, on the one hand, the recognition and acceptance by the employer and the union of the limits to which they will <u>agree</u> to advance their respective self-interests in the face of likely public opposition and, on the other, the <u>dictation</u> of these limits by a public tribunal. That the first situation calls for sophisticated and responsible union and management behaviour goes without saying. But it is only by applying pressures for greater sophistication and self-reliance that these qualities will develop; not by

persistent public regulation of the terms of employment. It may be idealistic and unrealistic that even given self-reliance we should expect much concern for that vague entity, the "public interest", from individual unions and employers under conditions of full employment. This is a valid doubt, but in Australia neither union nor management have been exposed sufficiently to the pressure for self-reliance.

It should be understood that whatever doubts have been expressed about the wisdom of compulsory arbitration on interest matters apply largely to private employment. In public employment, there is a strong case for keeping at bay political influences in determining the terms of employment and, on balance, the recommendations of a non-partisan committee of inquiry or of a compulsory arbitration tribunal might be expedient arrangements.

Finally, a word about the contribution which Australian compulsory arbitration has made to the evolution of a national wage policy machinery (discussed in Appendix A). Leaving aside the question whether Australian national wage policy has contributed to economic stability and a socially desirable distribution of income, the main requirements of a national wage policy machinery are not contingent on the existence of compulsory arbitration. This is supported at least by the experience of the Netherlands and Sweden. The development of compulsory arbitration in Australia into, among other things, an instrument of national wage policy was the result of the peculiar constitutional, institutional and economic circumstances of Australian history. The case for compulsory arbitration in general cannot fairly rest on this aspect of the Australian system.

APPENDIX A

COMPULSORY ARBITRATION AND NATIONAL WAGE POLICY IN AUSTRALIA*

Compulsory arbitration in Australia may be viewed from two points of view. One concerns its day-to-day activity in preventing and settling industrial disputes on a variety of industrial issues—wages, working conditions, dismissals, safety, jurisdictional matters, and so on. The second aspect of compulsory arbitration concerns its less frequent but no less important operation as a means of formulating national wage policy.

This paper is concerned with the second aspect of the compulsory arbitration system. It will deal with the conditions which give rise to wage policy-making; the principles on which wage policy has operated; the problems which it has encountered in recent years; and finally, with some proposals which have been made for its future development.

The Development of National Wage Policy Machinery

The history of wage policy in Australia may be said to date from the period of the Great Depression of the 1930's. But it is only in the last twenty years of more or less full employment that it has become established as a prominent feature of economic life. To understand some of the weaknesses of Australian wage policy, it is important to note at the outset that the development of wage policy in Australia has not arisen from any deliberate design based on a doctrinal faith in the need or wisdom of wage policy.

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Australia's wage policy machinery was an unplanned and unforeseen development, despite constitutional difficulties, from a piecemeal system for settling industrial disputes in a highly unionised economy. 1/ Early in its life, social criteria such as the "needs" of those at the lowest level of the occupational scale and "comparative wage justice" for the various grades of occupations came to be applied in settling disputes. But steadily national economic considerations assumed a significant place among the principles for wage fixing. These industrial, social and economic pressures have left their imprint on the character of Australian wage policy. As will be stressed below, the general acceptability of wage policy has been the result of a workable compromise based on industrial, social and economic considerations.

How did it come about that a piecemeal system for settling industrial disputes evolved into a wage policy machinery of national dimension? An effective wage policy machinery needs to be centralised and be able to have a reasonable degree of control over the general wage level and the wage structure. These requirements were met to a substantial extent fairly early in the history of wage fixation in Australia. De facto centralisation was achieved by the progressive dominance of the Commonwealth tribunal on key wage issues. About half of those working under awards (and these comprise some 90 per cent of wage and salary earners) are now covered by Commonwealth awards. The growth in the jurisdiction and status of the Commonwealth tribunal has indirectly also influenced the awards of state tribunals. The expansion of Commonwealth coverage was the result of early union preference for Commonwealth awards in the expectation that these would be more generous; and a succession of liberal judicial interpretations to the Commonwealth Constitution enabled this preference to be exercised. 2/ A fairly small work force, highly concentrated in a few capital cities, and

the absence of any serious regional problems also facilitated the development of centralisation. The centralisation of wage fixing proceeded along with the centralisation of trade unions and employer organisations. Thus, despite a number of legal limitations which remain in force the institutional basis for a wage policy machinery soon became well established: centralised wage fixing machinery, centralised unions and employer organisations, a comparatively small, highly concentrated and highly unionised labour force in a comparatively simple economy.

The manipulation of the general wage level and the wage structure was facilitated by the establishment of the basic wage. Originally conceived as the minimum wage for purely unskilled workers, a kind of "floor" to wages like the United States Minimum Wage, the basic wage soon became a component part of every wage, forming approximately 75 per cent—80 per cent of the average wage rate. Those doing work with special requirements such as skill, responsibility, danger, extra physical effort, etc., were paid a margin in addition to the basic wage. Thus, an increase in the basic wage raised the wage of all workers, skilled and unskilled alike, by the same amount, thus constituting an increase in the general wage level. In the early days, margins were determined on a piecemeal basis, industry by industry, by reference to job requirements of particular occupations and the economic state of the industry. But in time, the fitter in the metal trades became the yardstick for fixing margins generally; and a movement in his margin tended to produce similar increases in margins in other occupations and industries. At first, the pattern-setting influence of the fitter was slow and uneven. But in the postwar years of full employment, this influence strengthened markedly, so that for practical purposes when the fitter's margin and those of his associated workers in the metal industries

were determined, the new standard spread within a short time to most other industries.

More recently (1967), the Commonwealth tribunal decided to consolidate the basic wage and margin components into one wage. In accord with the practice of most countries, each job classification will be awarded a "total" wage. The tribunal has indicated that annual adjustments in total wages could be expected henceforth; but the impact of these general wage adjustments on the wage structure would depend on whether the tribunal is persuaded to award a flat-rate, proportionate or graduated increase to the different wage levels. This decision marks a formal recognition of the fact that the basic wage and key margins have for some time been determined on essentially the same national economic considerations and have the same general economic consequences. It remains to be seen whether the state tribunals will also formally apply the total wage concept; but whether they do or not, the influence of the Commission's wage awards will continue to set the pattern of state awards.

The Commonwealth tribunal has in the past been much less of a pace-setter on other matters, such as standard of hours of work and long service and annual leave, which have a bearing on the general level of costs and prices. But it is likely that in future its general influence on these issues will be greater.

Thus, the centralisation of wage fixing through the leadership of the Commonwealth tribunal (in recent years called the Commonwealth Conciliation and Arbitration Commission) and the development of key wages—the basic wage and metal trades margins—meant that any change by the Commission of these key wages resulted in a change in the general wage level and the wage

structure on a nation-wide scale. The implications of these national wage changes for the general level of prices, the balance of payments and the distribution of income are self-evident. These circumstances made some sort of a national wage policy inevitable. Thus, the development of centralisation and key wages not only created the means for a national wage policy but also the very need for it. This is a point which deserves particular emphasis.

The Search for Principles

How was this need met? With the development of the basic wage from its original "floor" concept to being also an important component of all wages, the social consideration of "minimum needs" of workers became more and more linked to the "economic capacity to pay" of the country. And as the real value of the basic wage rose well above the initial "needs" level, capacity to pay came to dominate the deliberations before the Commission. The adjustment of key margins which tended to be generalised also called for the same sort of economic considerations as the basic wage. But what does "capacity to pay" mean? For a long time this principle was firmly embraced by the tribunal (consisting of judges primarily with legal training) without any clear understanding of its meaning. To define it, as it often was, as the highest wage which the country could afford is, of course, not very meaningful. Nor was the practice of simply examining a list of economic indicators—employment, prices, volume of money, balance of payments, national income, etc.—particularly helpful. Obviously, unless a set of objectives was assumed, capacity to pay could not be given a concrete meaning. For, in a sense, the economy has an unlimited capacity to raise wages provided the exchange rate can be adjusted appropriately and the

effect of higher prices on the distribution of income can be controlled. But many would argue that fluctuations in the exchange rate and frequent corrections to the distribution of income by tax and social services adjustments are objectionable on economic, political and administrative grounds. Much of the current discussions in favour of wage policy aim at avoiding a scale of wage increase whose economic and social consequences would call for corrective measures through exchange depreciation and other adjustments. The general objectives of current economic policy are to maintain a steady level of full employment, to promote economic growth and to ensure a degree of price stability which would produce an acceptable pattern of income distribution and balance of payments viability. The ability of wage policy alone to achieve all these objectives is, of course, severely limited. Fiscal and monetary instruments must generally be regarded as the backbone of economic policy. But wage movements can affect the level of prices and, through prices, the distribution of income and the balance of payments. Thus, any meaningful definition of capacity to pay must connote the ability of the economy to sustain a degree of money wage increase so that real wages are raised in conformity with a desired income distribution and a viable balance of payments situation.

The Commission for a long time maintained that it was neither a social nor an economic legislature and that its role was merely the settlement of industrial disputes in which "theories and policies should play no part". 3/ It is true, of course, that its legal charter is in terms of preventing and settling industrial disputes; but it is also plain that disputes on national wage matters are "paper" disputes contrived by the parties to enable the Commission to institute a national economic enquiry. Such "disputes" require a different approach from the genuine day-to-day localised

disputes. However, a succession of national wage cases in the last fifteen years has brought acceptance, even if it is more implicit than explicit, that capacity to pay must be assessed, at least in good part, by reference to the economic consequences of any wage increase. Along with economic considerations, the Commission keeps in mind the social consequences, particularly to those at the lower end of the wage scale, as well as the industrial consequences of wage adjustments. The importance of productivity increases as a critical element in wage increases has been underlined quite clearly in recent judgments.

Thus, in the course of time, an important change has taken place in the outlook of the Commission both on its function and on the principles required to carry out this function. However, the task of the Commission in national wage adjustments is complicated by a number of factors. First, exports and imports and international capital movements play an important part in the prosperity of the Australian economy. Changes in the terms of trade, the state of the balance of payments and the size of the country's international reserves all have a bearing on capacity to pay. These elements in international trade vary from year to year, sometimes sharply and unexpectedly. How much weight should be given to them in awarding wage increases? To ignore them and to link wage adjustments solely to domestic productivity trends strictly along the lines of the recent American "guide lines" could produce, in the event, for example, of a serious reversal in the terms of trade, difficulties for the balance of payments as well as a change in the distribution of income to the detriment of the exporters, particularly those in the rural sector. An improvement in the terms of trade would of course, do the opposite. The social and economic consequences of these tendencies

could not be ignored by a national wage tribunal if it desired to avoid economic dislocation and remain acceptable to the main parties in wage fixing.

The second complication is the extent to which awards should be adjusted for price increases, particularly of those items which enter into the cost of living of wage earners. Increases in the Consumer Price Index could arise from one or more of a number of causes, the more important ones being: increases in world prices which affect the prices of imported and exportable goods; increased profit margins resulting from restrictive trade practices; increases in prices of food items as a result of crop failures; increases in indirect taxes; and "excessive" wage increases which are passed on. There is a strong case based on income distribution grounds for adjusting wages for price increases which are due to the first two causes, although it is difficult to see how a mere increase in wages would help to redistribute income in favour of wage earners if restrictive practices persist. For the rest, price increases do not provide persuasive grounds for corresponding wage increases. However, there are practical difficulties in measuring the relative significance of these different causes in any given increase in the Consumer Price Index. Therefore, as with the complication arising from international trade, the extent to which the Commission should take account of price increases must be a matter of judgment based on economic, social and industrial considerations.

The Commission's task in formulating wage policy would be reasonably simple if these were all its problems. True, it could not discharge its task in a mechanical way simply by taking a "guide line" based on long term projections of domestic productivity; but the allowances for the terms of

trade, the balance of payments and price changes would usually be marginal to the basic productivity figure. A much more difficult problem arises from the fact that its awards prescribe legal minima. There has been a persistent and strengthening tendency under conditions of full employment for overaward payments—wage rates in excess of awards—to be paid. 4/ This is not to deny that some overaward pay may be a desirable means of giving the relative wage structure greater flexibility, particularly when certain award wages under-rate the attraction rates for certain occupations. But the magnitude, widespread incidence and continuing growth of overaward pay suggest that it has gone well beyond desirable limits. This element of wage drift poses an important problem for the tribunal. Should it allow for this drift by making its awards less than might be justified by productivity, terms of trade, balance of payments and income distribution considerations? If so, what about those areas of employment, mainly in the public sector, where awards tend to be maxima as well as minima? To ignore the plight of this sector of wage earners could embarrass the recruiting prospects of public employment as well as encourage the unions concerned to bypass the Commission and to seek extra pay increases by applying strike pressure on employers in defiance of penal sanctions. In the circumstances, the Commission has been persuaded to grant award increases in excess of domestic productivity even though an adverse trend in the terms of trade persisted through much of this period. This is shown in the following table.

The period 1948/49-1964/65 includes the inflationary circumstances of the Korean War and perhaps the period after 1953 provides a more reasonable account of postwar wage policy in Australia. It will be seen that Nominal Minimum Weekly Wage Rates (representing mainly the awards of tribunals) rose

at a faster rate than productivity, domestic and effective. But the rise in the Consumer Price Index greatly diminished the real value of minimum wage rates. The difference between Nominal Average Weekly Earnings and Nominal Minimum Weekly Wage Rates reflects the wage drift whose principal components are overtime and overaward pay. It is likely that if no overaward pay had occurred, a smaller rise in the Consumer Price Index would have taken place, and Real Minimum Weekly Wage Rates would have matched productivity more closely. In the circumstances, the extent to which the rise in Nominal Average Weekly Earnings exceeded the rate of increase in Domestic Productivity was almost exactly equal to the rate of increase in the Consumer Price Index.

It should not be inferred that the rate of price increase experienced by Australia in this period had serious economic consequences. On the whole, the increase since 1953 has been moderate by international standards 5/ and the record of wage policy on this basis could be regarded as satisfactory. In this period, the unemployment rate rose above 1.5 per cent on a few occasions and usually for only a short time. Nevertheless, the continuing growth of overaward pay poses a real problem for the tribunal. The big unanswered question is what effect award increases, through their impact on overaward pay, will have on earnings. After all, it is the increase in actual earnings, not merely award wages, in relation to productivity which affect the price level. There is little doubt that increases in overaward pay have tended to force the tribunal to award larger increases partly to keep award wages in line with market rates and partly also to offset the price increases which may have resulted from these overaward payments. Thus, it should not be assumed that because overaward pay in the private sector is only about 10 per cent of earnings, it can be dismissed as a minor

PRODUCTIVITY, WAGES AND PRICES IN AUSTRALIA

(Average Annual Percentage Changes)

	1948/49-1962/63	1953/54-1962/63
1. Domestic Productivity* (GNP at constant prices per person employed)	2.0 to 2.1	2.1 to 2.3
2. Effective Productivity* (GNP at constant prices per person employed adjusted for changes in the terms of trade)	1.7 to 1.8	1.7 to 1.9

(*Range indicates adjustment at 1959/60 prices and 1953/54 prices respectively.)

	1948/49-1964/65	1953/54-1964/65
3. Nominal Minimum Weekly Wage Rate Index (Adult Males)	5.1	3.1
4. Nominal Average Weekly Earnings per Male Unit Equivalent (All Industries)	6.3	4.5
5. Consumer Price Index	4.1	2.2
6. Real Minimum Weekly Wage Rates (3 minus 5)	1.0	0.9
7. Real Average Weekly Earnings (4 minus 5)	2.2	2.3
8. Export Price Index	-1.1	-1.2
9. Import Price Index	1.9	1.1

All annual rates were derived from fitting least squares trends. "Nominal" wages are money wages in terms of current prices.

SOURCE: (a) Productivity figures were derived from Report of the Committee of Economic Enquiry, Vol. 1, Table 6.2; Vol. 2, Tables A3 and D1. The Effective Productivity figures for 1948/49-1962/63 were obtained by deducting the annual average rate of increase in the number of persons employed (1.8%) for 1948/49-1962/63 (Table D1) from GNP at Constant Prices adjusted for the Terms of Trade (Table A3).

(b) All other statistics were taken from Reserve Bank of Australia Statistical Bulletin, Sydney, 1948/49-1962/63

factor in the rise in earnings. The increase in overaward pay is important not only because it tends to result directly in an excessive rise in earnings but also because, in order to keep up with market rates, the Commission is led to grant bigger increases in awards and so to force the pace of earnings.

It would be a great help to know with some certainty what forces lie behind the growth of overaward pay. Unfortunately, there is as yet no satisfactory explanation for this phenomenon. It is likely that the level of aggregate demand may have an important bearing on it. As the level of unemployment falls to low levels of one per cent or less and excess demand develops, either in the aggregate or in key sectors of the economy, and overtime opportunities are fully exploited, overaward pay will tend to increase and to spread to a wide area of employment. The initiation and spread of overaward pay is not solely the result of union pressure. There is evidence that willingness of employers to offer overaward pay may have been just as important. 6/ In this respect the Australian experience is similar to that of many European countries. 7/ But in the Australian context, of immediate concern to the Commission is the effect of its awards on overaward pay. Given a high level of economic activity, what bearing does a particular increase in award wages have on the rate at which overaward pay, and hence earnings, increase?

There are several possibilities. First, overaward pay could be reduced by award increases. Award increases would be added in full to the earnings of those persons who do not receive overaward pay; those whose overaward pay is less than the increase in the award would receive the difference; and the rest would be unaffected by the increase in awards. In other words,

the overaward pay element would simply be absorbed by the award increase. The average level of earnings would in this situation rise less than proportionately to the increase in awards, and hence the wage drift as conventionally measured 8/ would be negative as a direct consequence of the increase in awards. The available evidence, however, denies the validity of this hypothesis.

The second possibility is for award increases to apply in full to all wage earners, those who receive overaward pay as well as those who do not, leaving the overaward element unaffected. Average earnings, being greater than award rates, would rise less than proportionately to the latter. The wage drift would again be negative but less so than the first case. There is some evidence that the immediate impact of an award increase conforms to this hypothesis in certain sections of the manufacturing industry. But with a time lag, the neutrality of overaward pay in general appears to be in doubt.

This gives rise to the third possibility: that the increase in award wages stimulates overaward pay to rise also. The evidence in support of this hypothesis is far from conclusive. There are cases where overaward pay is linked on a percentage basis to award wages, and here this hypothesis would apply. The existence of such cases in key industries could stimulate similar adjustments in overaward pay elsewhere. But the picture is far from clear. What appears to be a reasonable possibility, given circumstances of high employment in the upward phase of activity, is that the smaller the increase in awards the greater the increase in overaward pay; and vice versa. Thus, the smaller the increase in awards, the greater the wage drift. It is as if a large award increase reduces the capacity to pay overaward amounts.

But in reducing or eliminating the wage drift by granting a large award increase, the tribunal would also be making a larger contribution to earnings and so be encouraging costs and prices to increase. The choice in these circumstances would be to reduce the wage drift but to add to cost inflation; or alternatively, to reduce the impact on prices by restrained award increases but to endure a significant wage drift.

These then are the various possibilities; and the evidence vaguely suggests that the last possibility appears to be the most likely one. Much more work, however, needs to be done to establish its validity with any real confidence. Meanwhile, the Commission cannot refrain from awarding wage increases, however unsatisfactory the evidence of their economic effects may be.

Possible Approaches for the Commission

How should it proceed? The unions have suggested strongly and consistently that the Commission should keep the real value of its awards at least in line with productivity. It should, therefore, adjust award wages both for productivity increases and price changes. Consequential economic effects should be ignored. On this approach, the task of the Commission is thus essentially to take a retrospective view of productivity and prices. The figures in the table shown above indicate that the Commission and other tribunals have on the average failed to adjust real award wages fully to productivity. The employers, on the other hand, have pressed for award wages to be so adjusted that earnings will be matched by productivity to ensure that prices may remain steady. Overaward pay should be anticipated by the tribunal and its awards should be correspondingly reduced.

The unions' proposal would keep awards closely in line with the prevailing level of wages and would probably minimize the wage drift. But it could have disastrous economic consequences which would raise the question whether a national wage policy of this kind was at all desirable. By contrast, while the employers proposal might lead to greater price stability, it would result in a progressively widening gap between award and actual wages. This would be socially unjust and industrially unacceptable to those on award wages. Such a wage policy would also be pointless.

Faced with proposals which offer risks of being either economically disastrous or industrially unacceptable, the Commission has managed to steer an intermediate course—veering closer to one extreme or the other, depending on the composition of the Commission and the relative weight it is prepared to give to the economic, social and industrial aspects of wage increases. It has been shown that on the criterion of price stability since 1953, wage policy in Australia has not done too badly, bearing in mind especially the fairly consistent low unemployment rate in Australia and the periodic bursts of excess demand in the economy. Furthermore, as has been stressed, the Commission has not been inflexible in its approach and its procedures but has been prepared to introduce ways and means of doing greater justice to those on awards while minimizing adverse economic consequences. Apart from simplifying the procedural arrangements in national wage cases, the introduction of the total wage system should put an end to the traditional automatic link between changes in the wages of those at the bottom of the occupational scale and all other workers through the basic wage element. The lowest total wage is more truly a wage "floor" than the basic wage. Although similar to the American Minimum Wage in concept it is more representative of the actual wages of unskilled workers

throughout the economy. By this device the Commission has been able to raise in one operation the national minimum wage by over 10 per cent without significantly raising other wages at the same time.

The growth of overaward payments is now recognised by the Commission 9/ as posing a serious problem for its wage policy. Traditionally, tribunals have emphasized their concern for minimum wages only. But in the changed setting of full employment, the Commission has become more fully conscious of the difficulties which overaward payments bring to its determinations of award wages.

The clear statement that the Commission expects to be able to give total wage increases annually as part of the process of distributing the gains in productivity to the workers could take some force out of the pressure for overaward pay. It is possible that the confident expectation of regular general award wage increases may make employers more reluctant to grant and unions less anxious to press for overaward pay increases on the scale of recent years. Thus, although the Commission's approach may be characterised as one of compromise between the extreme demands of unions and employers, it has shown willingness to modify its procedures in order to try to ensure that its decisions are not only acceptable to the parties but also that they will not impair the economic stability of the country.

As might be expected, the Commission has not lacked critics. Apart from the perennial complaints from unions and employers, academic writers have poured forth a multitude of suggestions and counter-suggestions on wage policy. 10/ Some of these appear to have influenced the Commission, although, as must be the case in this contentious area of policy, changes have come slowly. Many writers on the subject would probably rest content

with the present compromise approach and the Commission's apparent willingness to consider such modifications in its procedure as might help to stem the wage drift tide. But two important and conflicting proposals have been made recently which deserve some consideration. One such proposal, which may be called the radical approach, is to do away with national wage policy altogether. 11/ It has been argued that the Commission was never designed as such and that it could not in any case be expected to administer a wage policy on the basis only of the minimum wages which it is empowered to fix; and further, that the operation of the labour market is so complex that there are no effective wage policy prescriptions which the Commission could apply with any predictable economic consequences. The most sensible function for the Commission under these circumstances is to try to settle industrial disputes not on a national scale but on as narrow a sector as possible on a piecemeal basis. Decisions on each narrow sector should not be extended to the economy as a whole. If, however, the determination of a national minimum wage in the sense of a floor to wages cannot be avoided, this should be done with reference to economic and social considerations; but any adjustment to this wage should be confined to the lowest category of unskilled workers. In effect, this proposal means that the Commission's national wage activities will be limited to prescribing a wage floor based on national social and economic considerations, but leaving the rest of wages to be determined in a decentralised fashion as part of the process of settling industrial disputes. This, it is assumed, will put an end to general wage increases with its unpredictable economic consequences.

There are a number of objections to this proposal. To begin with, whatever merits it may have, it is quite unrealistic to try to put the clock back. As was stressed at the outset, national wage policy has become

an institutional necessity. To try to revert to decentralised wage fixing when the institutions have operated on a centralised basis for a long time is likely to be resisted very strongly, particularly by the unions with their highly centralised organisational structure. However, even if such a change were possible the conventional pattern-setting force of the metal industries in Australia would ensure that changes in this industry are generalised within a fairly short time. The postwar history of wage fixing in Australia shows clearly the futility of various attempts by the Commission to deny that margins increases awarded for this industry should also be applied in other industries. The speed with which margins increases were generalised despite strong resistance from wage fixing authorities is indicative of the strength of the pressure for centralisation. Under these circumstances, it could be argued that in a full employment economy, fraught with the danger of cost inflation, a formal acceptance of a centralised wage policy as reflected in the recent decision on the total wage concept, might at least help to set the tone for moderation in wage increases. The Commission provides a meeting ground at the national level for unions, employers and governments to argue about the economic consequences of wage increases and, if nothing else, its awards in effect prescribe guide-lines for wages. In view of the increased sophistication of the Commission about its role and the issues involved, it is unlikely that this centralised arrangement will have serious economic consequences. At worst, it may do no good.

Towards Income Policy

The other proposal 12/ takes the existence of the present machinery as its starting point. Since a centralised wage fixing arrangement is unavoidable, why not make virtue out of necessity? One of the main problems of

full employment is that, despite the absence of excess demands, costs and prices tend to rise. Supposing that by fiscal and monetary means full employment is to be maintained but that excess demand will be avoided. In these circumstances can the Commission be turned to more positive value in moderating the forces of cost inflation? This idealistic approach would set the course of the Commission towards what has in recent times been referred to as "incomes policy". The main object of incomes policy is to prevent cost inflation by ensuring that the claims to income do not exceed the size of the national product. Wages are an important part of income and, therefore, need to be kept in check by wage policy. But this is only half the problem: the rise in other incomes, profits in particular, would also need to be restrained. Indeed, it may be that wage increases can only be kept within reasonable bounds if non-wage incomes are also kept in check. In other words, an incomes policy seeks to ensure that wage policy will be effective. In the Australian context, it would be the means to restrain the rise in overaward pay so that wage earnings would increase at a rate consistent with reasonable price stability.

To be fully effective, incomes policy may require a degree of direct fixation of maximum wages and prices, accompanied by severe penalties 13/ against breaches of such determination which many governments would find justifiable only under conditions of extreme economic emergency. These conditions cannot be said to have prevailed in Australia in the postwar period. Moreover, the present federal Constitution prevents the Commission from fixing maximum wage rates and the Commonwealth government from fixing prices. It is unlikely that in the foreseeable future any change in the Constitution on these powers will take place. Thus, any approach towards incomes policy would have to proceed within the framework of the system of

compulsory arbitration and would have to be based in effect on voluntary acceptance by the major parties in national wage cases of the prescriptions of incomes policy on maximum wage and price increases. What then are the prospects of developing the Commission into an agency for administering something like an incomes policy?

The national wage proceedings before the Commission, of course, have some of the essential requirements of incomes policy-making. Representatives of unions and employers at the highest level plead their respective cases before an impartial tribunal. The Commonwealth and state governments make their submissions both as employers and as representatives of the general public interest. Evidence of national economic and social significance is discussed and expert witnesses are often brought in. However, a number of basic deficiencies exist from the point of an effective incomes policy machinery.

To begin with, even if the national representatives of the unions and employers agreed on a formula for wage increases, it does not follow that their constituents can be forced or even persuaded to accept the prescribed limits to wage increases. Any decisions made at the national level are necessarily based on overall considerations. The particular circumstances of unions and employers may be expected to vary, often to a considerable degree. It is difficult to expect a union with the power to gain or an employer with the capacity to pay larger wage increases, to hold its hand in the "national interest" or even its own "long run" interest. How can individual unions and employers be persuaded that voluntary restraint on their part will be matched by restraint on the part of others? Can a voluntary taxation policy be successful? We may expect, therefore, that

ways and means will be found to pay overaward amounts. As Phelps Brown so aptly puts it, wage drift "is unamenable to central control". 14/

It is possible, however, that a wage policy which is acceptable to the Australian Council of Trade Unions (ACTU) will find a large measure of acceptance from most of the important unions. The ACTU has developed an impressive stature as an inter-union body which can persuade its affiliates to cooperate on many issues. In this respect it is well ahead of the British Trades Union Congress. Wage prescriptions are more likely to break down because individual employers find ways and means of exceeding these prescriptions.

Nevertheless, we may expect the degree of drift to be slowed down if the central representatives provide active support for the wage prescriptions and an appropriate competitive environment is promoted to discourage employers from paying overaward amounts too freely. Success in incomes policy is a matter of degree. Some slowing down of cost inflation is better than nothing. Thus, while the prospects for a more effective control of cost inflation through the Commission on an essentially voluntary basis should not be exaggerated, they are, nevertheless, real enough to be pursued and discussed.

Immediately, the more urgent task is to establish a basis for obtaining the agreement and support of national union and employer leaders on the limits to wage increases. It is in this connection that the Commonwealth government could play a critical role. One of the weaknesses of the present proceedings before the Commission is that the Commonwealth government plays a limited part. Generally it merely submits evidence on the state of the economy, points to the dangers of excessive wage increases, and often makes

veiled suggestions for a very small or no increase in wages. Such a submission is of little help to the Commission and of no value in persuading the unions to moderate their demands. If anything, it gives the appearance that the government stands behind the employers merely to keep wages down without ensuring that adequate restraints will also be imposed on prices and profits. This is perhaps the greatest weakness of the present procedure. Any prospect for a move towards incomes policy and more effective influence on the course of wages would have to rest heavily on a more positive and active participation by the Commonwealth government. As the agency controlling fiscal and monetary instruments, the government is in a unique position to help to integrate wage policy into its general economic policy. Social services benefits and tax concessions, particularly to the lower income groups, might be an important inducement for greater wage restraint on the part of the unions. By promoting a more competitive environment through stiff legislation against restrictive practices and a tariff policy which is not unduly protective, employers would be discouraged from granting overaward pay and raising prices too readily.

However, the manner in which national wage hearings have been conducted traditionally does not provide a satisfactory setting for increased government commitment. The hearings are in public, the parties are represented by counsel and expert witnesses are tested by cross examination. The judicial atmosphere of the hearings is less marked since 1956 when the Commission discarded the traditional whig and gown of the ordinary courts of law. But despite the greater informality with which the hearings are conducted (and this has largely been due to the President of the Commission since 1956), the conceptual basis of the proceedings is judicial: the belief that hearings in public, counsel and cross examination provide the

necessary ingredients for a "fair trial". Wage fixing is, of course, not a judicial matter, despite the early belief that it was. What is being settled is not an "industrial dispute" in the ordinary sense of the term but, as is generally conceded by all sides, a "paper" dispute. It is essentially a procedure for securing a result which will be broadly acceptable to the parties and, where national considerations are involved, for protecting the "public interest", however vague this last entity might be. On this concept, the present procedures of the Commission are not only inappropriate as such but also unsuitable for any active government participation. All that the government can do in national wage hearings is to submit, through its counsel, its view about the state of the economy and the correct principles to adopt for wage fixing. To do more in a public hearing, to do the sorts of things which were outlined above, could be politically embarrassing and economically unwise. Would a government through the Reserve Bank formulate its monetary policy in a public hearing? The analogy may not be perfect but there is a moral in it for incomes policy. The use of lawyers to present the views of the parties on complex economic issues does not seem to be the best way of throwing light on a complicated subject. Furthermore, it keeps the parties apart as litigants rather than as participants in the task of formulating wage policy. Nor is the system of cross examination an appropriate method of extracting information, judgment and wisdom from experts. Its essential purpose in the ordinary courts of law is to discredit the witness; this is also how it tends to be used in wage hearings. The heads of relevant civil service departments and the central bank are by this device in a public hearing excluded from giving their views on relevant aspects of the economy, and a rich source of economic intelligence is kept hidden not only from the

Commission but also from the parties whose appreciation of the compatibility of national interest and their own self interest could well be heightened by such evidence.

Another aspect of the judicial basis of Australian national wage determination is the appointment of lawyers only to the Commission as presidential members, who have the status of superior court judges. The presidential members are normally concerned with industrial disputes on matters in which the public interest at large is involved—general wage adjustments, standard hours of work, long service and annual leave being the principal ones. The more localised matters are handled by lay commissioners who have a more varied background and who are normally drawn from the ranks of trade union officials, industrial officers in companies and public servants. The judicial status of the presidential members is signified by their title "Mr. Justice". There is a strong traditional belief that only legal minds are capable of sifting complicated and contentious arguments and evidence, and to make "impartial" and "fair and reasonable" judgments. This assumption must be questioned in the area of economic analysis. There are grounds for believing that in many cases members of the Commission have not understood the more technical aspects of economic evidence. Often, the Commission's decisions have been sound but for the wrong reasons. It is true, of course, that national wage issues are not merely exercises in economics—there are important social and industrial judgments to be made. But it would seem reasonable to suppose that some members of the Commission should be persons with a rigorous training in economics.

Thus, the reforms which appear to be called for the procedures of the Commission are fairly simple ones and are based on the premise that national wage fixing and incomes policy making are not strictly judicial processes. The procedures which are appropriate for the latter may hinder the effectiveness of an incomes policy machinery. What is being suggested here is that the hearings on national wage, hours and other such matters should not be conducted in public; that the conduct of the enquiry be made much more informal by requiring the parties to present their cases directly and not through counsel and by abandoning the practice of cross examination of expert witnesses; and that trained economists be included in the Commission.

In the above discussion, it has been assumed, of course, that pressure on wages and prices arising from excess demand will be controlled by appropriate fiscal and monetary actions. Incomes policy would be a futile exercise under conditions of excess demand. But given this condition, the task of incomes policy is to control cost inflation by ensuring that the claims on income will be matched by national product.

It has been stressed that the prospects for a more effective control of cost inflation through the Commission with the changes in procedure suggested above should not be exaggerated. But they appear to be real enough to warrant serious discussion. In the last ten years or so, the Commission has changed its outlook on its de facto function: its language, approach and mode of conducting hearings have moved away from the judicial pretensions of the past to a more realistic appreciation of its task. It may be that the unions and employers organisations are not as widely divergent in their approach to wage policy as might appear from their submissions. Indeed, the employers have conceded in recent years that some increase in

wages could be justified. This marks a big step from the traditional approach of employers in denying that any increase in awards could be sustained without economic difficulties. It remains for the Commonwealth government to take the lead on what could be a more effective way of restraining the course of wages and prices short of compulsion. Whether the government takes this lead or not depends ultimately on the political necessity of doing so. The fear that deeper involvement in wage fixing could entail more detailed economic planning may be a discouragement to the present government. So long as the Australian price level rises roughly in line with world prices, as it has tended to in recent years, it is likely that the government will move with caution on this matter. But the next ten years could well see some interesting developments towards an incomes policy machinery. Unlike most other countries which are grappling with the problem, Australia does not have to start from scratch. She has had for some years the basic framework of such a machinery.

REFERENCES

1/ In the postwar period, the degree of unionisation has varied mostly between 55 per cent and 60 per cent of wage and salary earners. But it was as high as 50 per cent as early as the 1920's.

2/ E.I. Sykes, "Labour Arbitration in Australia", The American Journal of Comparative Law, Vol. 13, No. 2, Spring 1964, pp. 219-22.

3/ See J.E. Isaac, "The Basic Wage and Standard Hours Inquiry in Australia, 1952-53", International Labour Review, Vol. 64, No. 6, June 1954, p. 588.

4/ See K.J. Hancock, "Earnings Drift in Australia", Journal of Industrial Relations, Vol. 8, No. 2, July 1966, pp. 130-31.

5/ Between 1953 and 1964, the percentage increases in the Consumer Price Index in a number of countries were as follows: U.S.A. 16 per cent; Canada, 17 per cent; W. Germany, 24 per cent; Australia, 25 per cent; Netherlands, 36 per cent; U.K., 38 per cent; Sweden, 41 per cent; Japan, 43 per cent; France, 57 per cent. See A.M. Ross, "Guideline Policy - Where We Are and How We Got There", Table 4, in G.P. Shultz and R.Z. Aliber, Guidelines, University of Chicago Press, Chicago, 1966.

6/ J.E. Isaac, "Wage Drift in the Australian Metal Industries", Economic Record, Vol. 41, No. 94, June 1965, pp. 165-6.

7/ E.H. Phelps Brown, "Wage Drift", Economica, Nov. 1962, p. 350.

8/ The percentage change in the ratio of the earnings index to the award rates index.

9/ The President of the Commonwealth Conciliation and Arbitration Commission, Tenth Annual Report, August 1966, pp. 18-19.

10/ See J.E. Isaac and G.W. Ford, Australian Labour Economics: Readings, Sun Books, Melbourne, 1967, pp. 336-43.

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12/ J.E. Isaac, Wages and Productivity, Cheshire, Melbourne, 1967, Ch. 5.

13/ J. Pen, "The Strange Adventures of Dutch Wage Policy", British Journal of Industrial Relations, Vol. 1, Oct. 1963, pp. 318-330.

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APPENDIX B

BRIEF NOTES ON THE STRUCTURE OF THE FEDERAL AND STATE SYSTEMS OF INDUSTRIAL REGULATION

The Federal Arbitration System

There is a clear separation in this system between arbitral (award making) and judicial (award interpretation and enforcement) functions. The arbitral function is administered by the Commonwealth Conciliation and Arbitration Commission. It consists of the President and (at present) five Deputy-Presidents; a Senior Commissioner and (at present) twelve other Commissioners. The Presidential members have the qualifications and status of Commonwealth judges. No qualifications are specified for the Commissioners, most of whom have in practice been drawn from government departments, the unions and management.

As a generalisation, it is true to say that the Presidential members are concerned with matters involving the general public interest—the basic wage (and since 1967, the total wage), standard hours of work and long service leave, and all other matters deemed by the President to involve the public interest, which may be brought to the Presidential members by way of reference or appeal. Reference and appeal cases are heard by a mixed Commission composed of Presidential members and Commissioners. The day-to-day industrial disputes and all matters not involving the basic wage, standard hours and long service leave are handled by the Commissioners.

There are at present also three Conciliators who may be appointed to assist Commissioners. Conciliators have no powers of compulsory arbitration but may only arbitrate with the consent of all parties in a dispute.

The judicial function of the system is administered by the Commonwealth Industrial Court which consists of a Chief Judge and (at present) five Judges, all of whom have the qualifications and status of Commonwealth Judges. The Industrial Court is concerned with such matters as the interpretation of awards, determining questions of law referred to it by the Commission, matters relating to the government and administration of unions, and questions involving breaches of awards and the enforcement of awards.

The Wages Board Systems of Victoria and Tasmania

(a) Victoria

There are just over two hundred Wages Boards in Victoria, each Board being assigned to a particular trade or group of trades. A Board is composed of an equal number of employee and employer representatives (between four and ten in all) plus an independent chairman. Each has one vote and decisions are by majority. Proceedings are informal with no legal representation being allowed.

The Boards have power to decide all industrial matters (except questions of preference to unionists) e.g., hours of work, pay, rights and conditions of employment. They have a discretionary power to follow the decisions of the Commonwealth tribunal and they do often automatically follow such rulings. Their decisions establish a common rule for the industry in question.

There is a right of appeal from a Wages Board to the Industrial Appeals Courts against any determination of the Wages Board. This Court consists of a Judge of the County Court as President plus one employer and one

employee representative. Legal questions are decided by the President but all other matters are decided by majority vote.

(b) Tasmania

The system is almost identical to that in Victoria with the exception that there is no Industrial Appeals Court, and thus the only appeal against the determination of a Wages Board is to the Supreme Court on matters of law.

The Arbitration Systems of the Other States

(a) New South Wales

There are over four hundred Conciliation Committees set up in relation to particular industries and occupations. They are composed of an equal number of employer and employee representatives plus a Conciliation Commissioner as an independent chairman. Proceedings are informal and the Committees have power to make awards with respect to any industrial matter such as wages, hours, overtime rates, etc. Decisions are by majority, but in a situation where there is an actual or potential stoppage of work a Conciliation Commissioner himself has the power to make an award which has the same legal force as an award made by a Conciliation Committee.

There is a right of appeal against any decision of a Conciliation Committee or Commissioner to the Industrial Commission. This body is composed of Judges who either sit alone or in "Court Session" (the President plus two other Judges). There is a right of appeal, in matters of jurisdiction, against the decision of a single Judge to the Commission in Court Session, but otherwise the decisions of the Commission are final. It should also be noted that this body has both judicial and arbitral powers.

(b) Queensland

In Queensland, the arbitral and judicial functions are separated as in the Commonwealth system.

The arbitral function is performed by the Industrial Conciliation and Arbitration Commission which is composed of lay Commissioners who sit individually or in full bench (three members). They have the power to regulate conditions of work on the application of a registered industrial union or interested party. They may, in matters such as the basic wage and standard hours, issue a general ruling provided that all persons who will be affected have been given an opportunity to be heard.

The judicial function is performed by the Industrial Court which consists of a Supreme Court Judge sitting alone. It hears appeals from the Commission on the grounds that a decision is outside the jurisdiction of the Commission or wrong in law; it is also responsible for imposing penalties.

(c) Western Australia

The judicial and arbitral functions are also separated in the West Australian system. The Western Australian Industrial Commission, composed of lay Conciliation Commissioners who sit alone or in Court Session (three Commissioners), exercises the arbitral function. It has power to inquire into any industrial matter or dispute and make awards with respect to matters such as pay, hours of work, shift work, etc. An appeal lies from a Commissioner sitting alone to the Commission in Court Session, and matters of general application such as fixation of the basic wage are always heard in Court Sessions. There is a right of appeal to the Industrial Appeal

Court on matters of law and jurisdiction. This Court consists of three Judges who also have power to try offences under the act and impose penalties.

(d) South Australia

There are about seventy Conciliation Committees relating to particular industries. As in New South Wales, these are composed of equal numbers of employer and employee representatives (between four and eight in all) with an independent chairman who is one of the Commissioners of the Industrial Commission. The Conciliation Committees may make awards on all matters except annual salaries. There is a right of reference by the Commissioner and a right of appeal by the parties in a Conciliation Committee to the Industrial Commission.

The Industrial Commission consists of a President who has the qualifications and status of a Judge of the Supreme Court and two lay Commissioners. In addition to the matters brought to it by reference or appeal from the Committees, the Commission has the power to declare the living wage. (No such declaration has been made since 1949.)

The President of the Commission will also constitute the Industrial Court which will be concerned with hearing appeals on questions of law and cases stated by courts of summary jurisdiction, interpretation of the Industrial Code and of awards, determinations of questions of law and cases stated by the Commission and Conciliation Committees and dealing with prosecutions.

APPENDIX C

SOME STATISTICS ABOUT THE AUSTRALIAN ECONOMY

1. Population (1966)

	Millions
New South Wales	4.2
Victoria	3.2
Queensland	1.7
South Australia	1.1
Western Australia	0.8
Tasmania	0.4
Northern Territory and Australian Capital Territory	0.4
Australia	11.8

SOURCE: Commonwealth Bureau of Census and Statistics, Pocket Compendium, 1967.

2. Distribution of Population (1961)

	Percentage of Total
Urban:	
Metropolitan (State Capitals)	56.12
Other	25.82
Rural	17.82
Migratory	0.24
	100.00

SOURCE: Commonwealth Bureau of Census and Statistics, Pocket Compendium, 1967.

3. Size of Work Force (1967)

4.8 millions

(Estimated by Department of Labour and National Service)

4. Rates of Increase in Population and Work Force

	1954-61	1961-68 (Projected)
Population	2.26	2.27
Work Force	1.91	2.61

SOURCE: J.E. Isaac and G.W. Ford, Australian Labour Economics: Readings, Sun Books, Melbourne, 1967, p. 348.

5. Work Force by Industry (1961 Census)

	Percentage
Rural industries	11.1
Mining and quarrying	1.3
Manufacturing	27.5
Electricity, gas, water, etc.	2.3
Building and construction	9.0
Transport and communication	8.8
Commerce and finance	20.0
Public authority (n.e.i.) and professional	14.0
Entertainment, sport and recreation, personal and domestic service	6.0
	100.0

SOURCE: J.E. Isaac and G.W. Ford, op. cit., p. 354.

6. Wage and Salary Earners in Private and Government Employment (1965)

	Percentage	
	Private	Government
Males	72	28
Females	82	18
Persons	75	25

(Excludes employees in rural industry, private domestic service and defence forces.)

SOURCE: Commonwealth Bureau of Census and Statistics, Labour Report, 1964, p. 196.

7. Exports as Percentage of Gross National Expenditure

1966-67 15%

SOURCE: Commonwealth Bureau of Census and Statistics, National Income and Expenditure, 1966-67.

8. Gross National Product Per Capita (1965)

	U.S. Dollars
United States	3,020
Sweden	2,040
Canada	1,940
New Zealand	1,760
Australia	1,730
United Kingdom	1,500

SOURCE: International Bank for Reconstruction and Development, World Bank Atlas of Per Capita Product and Population.

APPENDIX D

L'ARBITRAGE OBLIGATOIRE EN AUSTRALIE

RESUME

Ce qui distingue l'Australie de beaucoup d'autres pays, dans le domaine des relations du travail, c'est qu'on y dispose, pour régler les conflits industriels, d'un appareil juridique compliqué et efficace de conciliation et d'arbitrage, tant facultatifs qu'obligatoires. Conçu à l'origine pour régler les conflits "graves", cet appareil joue un rôle de plus en plus important dans le règlement des différends du travail, petits et grands.

L'arbitrage obligatoire a été instauré après une vague de grèves importantes, dans les années 1890. Une fois qu'il a été bien établi, les employeurs, les syndicats et les gouvernements ont adapté les structures, les activités et le personnel de leurs services de relations du travail à l'existence de ce régime, qui est ainsi entré dans les moeurs. Mais bien que certains de ses éléments soulèvent périodiquement des critiques, le fait que le régime reste en vigueur et que le public continue à le soutenir ne s'explique pas seulement par les habitudes qu'il a introduites, mais aussi par la souplesse de son fonctionnement. Beaucoup de dispositions officiellement "obligatoires" sont en fait appliquées volontairement dans la pratique; un bon nombre de ces "arbitrages" sont des négociations qui aboutissent à un accommodement des positions de force prises par les parties en cause. Dans

une grande proportion des grèves, on n'a pas recours aux sanctions pénales, et même lorsqu'on y a recours, on ne les applique pas dans toute leur rigueur.

La présente étude renferme les points saillants de la réglementation des relations du travail en Australie: le partage de juridiction entre les tribunaux fédéraux et les tribunaux d'Etat; la négociation collective et son importance dans le contexte de l'arbitrage obligatoire; la confiance qu'on a dans l'existence et la stabilité de l'organisation syndicale; les dispositions prévoyant des sanctions pénales contre les grévistes, et leur application. On fait des comparaisons avec les conditions qui règnent en Amérique du Nord.

Après un examen de l'expérience australienne en matière d'arbitrage obligatoire, on porte les points suivants à l'actif du régime. Premièrement, l'institution de l'arbitrage obligatoire a constitué, dès le début de l'histoire des relations du travail, un mécanisme de règlement rapide des conflits industriels de toute sorte, dans l'entreprise privée et la fonction publique. Deuxièmement, l'arbitrage obligatoire, en occupant un champ beaucoup plus vaste dans l'économie, a permis aux normes de salaires et aux conditions de travail d'atteindre un plus haut degré d'uniformité que celui auquel on aurait pu s'attendre dans un pays aussi vaste et où les syndicats sont aussi inégaux par l'importance et la puissance. Les conditions obtenues par les syndicats forts sont en général accordées ensuite aux travailleurs dont le pouvoir de négociation est plus faible. Troisièmement, en donnant aux syndicats accrédités un statut juridique et la sécurité légale, il a diminué de beaucoup le malaise industriel qu'entraînaient les campagnes d'organisation des syndicats, et a établi les bases d'un syndicalisme stable. Il a aussi

apporté une législation complexe qui protège les droits des syndiqués contre les pratiques oppressives et déraisonnables des dirigeants syndicaux. Quatrièmement, les sanctions pénales, particulièrement lorsqu'on y a eu recours judicieusement, ont contribué à réduire les pertes causées par les arrêts de travail prolongés, et ont souvent donné aux chefs syndicaux l'instrument nécessaire pour prévenir les grèves inutiles. Si l'appareil d'arbitrage a pu prendre cette envergure, c'est que, bien entendu, tout le monde a reconnu la compétence des pouvoirs publics en matière de relations du travail.

A ces avantages du régime, il faut opposer ses effets négatifs sur le processus de la conciliation et sur la volonté des parties de se faire mutuellement des concessions; en outre, par voie de conséquence, les syndicats et les patrons ont perdu dans une certaine mesure l'habitude de fixer eux-mêmes les conditions d'emploi et, ce qui est encore plus important, de déterminer les modalités d'application de ces conditions. Le grand nombre d'arrêts de travail de courte durée reflète, pour une bonne part, le fait que les dirigeants syndicaux et patronaux ne sont pas à la hauteur de la tâche quand il s'agit de régler les revendications et les griefs, et qu'ils ont tendance à s'en remettre pour cela à un arbitre qui est disposé à rendre un jugement. C'est peut-être là que réside la principale différence entre les relations du travail en Amérique du Nord et en Australie. Reste à savoir maintenant si, à tout prendre, c'est là un prix modeste à payer en échange de l'élimination presque totale des arrêts de travail prolongés.

En plus d'être un instrument servant à régler les conflits industriels, le régime d'arbitrage australien est aussi devenu peu à peu—par suite des circonstances constitutionnelles, institutionnelles et économiques particulières de l'histoire de l'Australie plutôt que par une volonté arrêtée—

un instrument de la politique salariale nationale. Les principales qualités d'un appareil de politique salariale nationale ne dépendent pas, naturellement, de l'existence d'un régime d'arbitrage obligatoire. Mais l'évolution d'un tel appareil a créé en Australie à la fois la possibilité et le besoin d'une politique salariale nationale. Cette question est traitée dans un appendice de l'étude principale.

NOTES

Study No. 4

TASK FORCE ON LABOUR RELATIONS

Compulsory Arbitration in Australia Professor J. E. Isaac